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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210506
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Matter of Application No. 85/569,798 for the  
mark: POP OF CULTURE

Ovation LLC,

Opposer,

vs.

E! Entertainment Television, LLC,

Applicant.

Opposition No. 91-210506

**OPPOSER'S OPPOSITION TO  
APPLICANT'S MOTION TO COMPEL  
AND TO EXTEND DISCOVERY  
DEADLINES; AND**

**DECLARATION OF PAUL A. BOST IN  
SUPPORT THEREOF**

## **I. INTRODUCTION**

To hear Applicant E! Entertainment Television, LLC (“Applicant”) tell its story, Opposer Ovation LLC (“Opposer”) is the party that has been delinquent in complying with its discovery obligations. In fact, ***just the opposite is true.***

Since the beginning of their dispute, Applicant has thwarted all of Opposer’s attempts to obtain meaningful substantive responses to discovery that Opposer served on Applicant in January 2014. Rather than provide meaningful, substantive responses from the outset (as Opposer did in response to Applicant’s multiple discovery requests), Applicant disregarded its discovery obligations time and again, and sought only to delay the proceedings and its deadlines for responding to discovery, all the while pushing Opposer to comply, and demanding that Opposer discuss settlement without having the benefit of Applicant’s discovery requests.

These purported issues—which Applicant raised for the first time only in a retaliatory attempt to sidetrack Opposer from addressing *Applicant’s* wholesale failure to respond to Opposer’s discovery requests—are the subject of Applicant’s motion to compel (the “Motion”). In addition to being asserted in an obvious attempt to detract from Applicant’s own discovery shortcomings, all of the issues in Applicant’s Motion are also improperly raised and not subject to adjudication for the following reasons:

*First*, Applicant failed to meet and confer with Opposer regarding the issues presented by its Motion.

*Second*, Applicant raises issues with requests for admission (“RFAs”) through the wrong procedural vehicle. A motion to compel cannot address RFA responses. Instead, Applicant had to file a motion to test the sufficiency of Opposer’s RFA responses, but in a rush to paint Opposer in a bad light, included Opposer’s RFA responses in Applicant’s ill-conceived Motion.

Even if Applicant could overcome the procedural defects of its Motion, Applicant’s Motion fails on the merits. As demonstrated below, Applicant has fully complied with its discovery obligations with respect to the interrogatories, requests for production, and RFAs at issue, by providing full and complete responses to permissible discovery requests propounded

within the scope permitted under the TBMP and the Federal Rules of Civil Procedure (“FRCP”). Simply put, the majority of Applicant’s disputes with Opposer’s responses stem from Applicant’s failure to propound reasonable and comprehensible discovery requests.

Because Opposer’s Motion is procedurally improper, was filed in contravention of the meet and confer requirements, and is nothing more than a smokescreen designed to mask Opposer’s own deficiencies in responding to Applicant’s discovery and to seek another extension of time to respond to Opposer’s discovery requests after Opposer denied the additional extension, Opposer’s Motion should be denied in its entirety.

## **II. RELEVANT FACTUAL BACKGROUND**

Applicant’s rambling factual recitation notwithstanding, the facts relevant to the instant Motion are quite straightforward. These facts make clear that Applicant made no real attempt to meet and confer regarding the supposed deficiencies of Opposer’s discovery responses that Applicant now raises by way of this procedurally defective Motion. Instead, throughout the relevant period, Applicant merely exploited the fact that it had beaten Opposer to the punch in serving its discovery requests, attempting (after it received Opposer’s discovery responses) to force Opposer to the settlement table without the benefit of any reciprocal discovery responses from Applicant. It was only when it became clear that Opposer would not indulge Applicant’s continuous efforts to skirt its own discovery obligations that Applicant filed the instant Motion, raising, for the very first time, trumped-up issues regarding Opposer’s discovery responses and requesting (yet again) an additional extension of time to respond to discovery requests that Opposer served back in January 2014.

On November 12, 2013, Applicant served its first set of discovery requests on Opposer, consisting of interrogatories (the “Interrogatories”), document requests (“RFPs”), and RFAs. (Declaration of Paul A. Bost (“Bost Decl.”) at ¶ 2.) On December 3, 2013, Opposer requested a 30-day extension of time to respond to Applicant’s discovery requests in light of significant foot surgery that Opposer’s counsel had. (Bost Decl. ¶ 3, Ex. A (12/3 email from W. Walters to M. McCue).) In response, Applicant initially attempted to extract from Opposer an agreement that

Opposer would not serve any discovery requests on Applicant until Opposer responded to the outstanding discovery requests, but ultimately agreed to the requested 30-day extension on the condition that Opposer grant Applicant a reciprocal 30-day extension of time to respond to any discovery served by Opposer, which Opposer agreed to do. (*Id.*, 12/4 and 12/6 emails from M. McCue to W. Walters.) On January 10, 2014, Opposer requested one additional week to respond to Applicant's discovery, offering the same to Applicant, if needed. (*Id.*, Ex. B, 1/10 email from W. Walters to M. McCue.) Applicant agreed to the further extension, this time on the condition that the remaining scheduling deadlines be extended by 90 days. (*Id.*, 1/10 email from M. McCue to W. Walters.)

Pursuant to the parties' agreement, Opposer served its objections and responses to Applicant's discovery requests on January 23, 2014. (Bost Decl. ¶ 4, Exs. B-D.) The next day, Opposer propounded its first set of interrogatories and requests for production and served them on Applicant. (Bost Decl. ¶ 5, Exs. E-F.) On January 27, 2014, Applicant wrote Opposer regarding its discovery responses and the need for a protective order in the case, noting that Applicant would "address the discovery responses in a separate email/letter after [its counsel] have had a chance to review them in detail." (Bost Decl. ¶ 6, Ex. G, 1/27 email from M. McCue to W. Walters.) **No substantive issues regarding Opposer's discovery responses were raised at that time by Applicant.**

After the parties' stipulated protective order was entered by the Board, Applicant requested that Opposer begin its document production, and raised the possibility of settlement. (Bost Decl. ¶ 7, Ex. H, 2/6 email from M. McCue to W. Walters.) That same day, Opposer responded that "[i]t would be helpful to have [Applicant's] responses to our interrogatories before we discuss settlement," reminding Applicant that Opposer had "already answered all of [Applicant's] discovery and it would be a bit one-sided settlement discussion without having [Applicant's] responses." At that time, Opposer also suggested that the parties delay their respective document productions to minimize costs on both sides. (*Id.*, 2/6 email from J. Pietrini to M. McCue.)

On February 10, 2014, Applicant responded to Opposer's proposal, indicating that it would "let [Opposer] know as soon as possible whether [Applicant] [wa]s willing to postpone [Opposer's] document production" and stating that it was still "reviewing [Opposer's] objections and response to [Applicant's] discovery requests and we will get back to you to discuss any additional issues." **Again, no substantive issues regarding Opposer's discovery responses were raised by Applicant at that time.** (*Id.*, 2/10 email from M. McCue to J. Pietrini/W. Walters.)

Opposer wrote back on February 12, 2014, stating that Opposer would "begin [its] document production shortly," but reiterating Opposer's need for Applicant's discovery responses before the parties could broach settlement. (*Id.*, 2/12 email from J. Pietrini to M. McCue.) The same day, Opposer served on Applicant its first set of requests for admission. (Bost Decl. ¶ 8, Ex. I.) When Applicant responded on February 14, 2014, although it noted that Opposer had not yet produced documents, Applicant proposed that the parties completely suspend the proceedings for a period of 120 days to enable them to engage in settlement discussions, and further proposed that Applicant's document production and written discovery responses be deferred until *after* the settlement discussions concluded and the proceedings resumed. (Bost Decl. ¶ 9, Ex. J, 2/14 email from M. McCue to J. Pietrini.) Applicant also noted (albeit contrary to its discovery obligations under the TTAB and FRCP) that Applicant "is not going to unnecessarily incur fees in responding to requests that are artificially tied to commencing settlement discussions," making clear its reluctance to spend any time or money on responding to Opposer's discovery requests. (*Id.*) Once again, however, **Applicant raised no issues whatsoever with the sufficiency of Opposer's discovery responses**, aside from noting that Opposer had not yet produced documents in connection with Applicant's RFPs and interrogatories. On February 24, 2014, Opposer informed Applicant that there had been a death<sup>1</sup> in counsel's family and that Opposer would get back to Applicant as soon as possible. (*Id.*, 2/24 email from W. Walters to M. McCue.)

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<sup>1</sup> The death of Opposer's counsel's stepfather was also the "personal issue" referred to in her email to Applicant's counsel in February 2014.

On March 14, 2014, Applicant inquired regarding Opposer's consideration of the proposal Applicant had made to suspend the proceedings, stating that "the proposal [it] conveyed is still on the table," but requesting, for the very first time, "a few dates and times that [Opposer's counsel] are available to confer on [Opposer's] responses to [Applicant's] discovery requests and [Opposer's] document production." (Bost Decl. ¶ 10, Ex. J, 3/14 email from M. McCue to W. Walters.) Still, Applicant made no mention of any specific issues regarding Opposer's discovery responses that it wished to address. (*Id.*) Opposer's counsel was unable to immediately respond to Applicant, as both Ms. Pietrini and Ms. Walters were in the midst of preparing for a trial set to commence on April 7, 2014 out of state, and, on top of that, Ms. Walters was dealing with some medical issues related to her twin pregnancy. (*Id.*)

Knowing of counsel's unavailability to address these issues immediately, Applicant wrote Opposer on March 27, 2014, requesting "an additional [30-day] extension of time to respond to [Opposer's] discovery requests" while Applicant waited for a response to its proposal. (Bost Decl. ¶ 11, Ex. J, 3/27 email from M. McCue to W. Walters.) In that correspondence, Applicant made clear that its prior request for a meet and confer regarding Opposer's discovery responses had been made only "in the alternative" to Applicant's proposal regarding a potential mechanism for settlement discussions. (*See Id.* ("We have not received any response to our proposal below for a settlement procedure or, *in the alternative*, our request that [Opposer] provide proposed dates to meet and confer on [Opposer's] discovery responses.")) (emphasis added).) The very next day, Opposer explained the reasons why Applicant's one-sided proposal to suspend the proceedings was unacceptable to Opposer, namely, that it disregarded Opposer's stated need for discovery from Applicant before fruitful settlement discussions could take place. Nonetheless, Opposer informed Applicant that it was working on a proposed settlement offer based on its limited knowledge of Applicant's business, and invited Applicant to forward any concrete settlement terms that it had in the meantime. Moreover, since the discovery deadline in this case had already been extended to June 7, 2014, Opposer explained that it "prefer[red] to keep the proceeding moving forward while the parties pursue the possibility of a good faith

resolution.” As to Applicant’s request for another 30-day extension of time to respond to Opposer’s discovery, Opposer noted that the current deadline “already reflect[ed] **two prior reciprocal extensions of time** (one for 30 days and another for 7 days).” Nevertheless, Opposer offered a further 5-day extension of time to April 9, 2014, as a professional courtesy. (*Id.*, 3/28 email from W. Walters to M. McCue.) Opposer saw no need to address Applicant’s prior request for a meet and confer, since that request had been posed only as an alternative to the settlement route, which Opposer understood the parties would pursue once a mutual exchange of discovery had occurred. (*Id.*)

On March 31, 2014, Applicant indicated that it would “respond to [Opposer’s] discovery requests by April 9,” but that it “must receive [Opposer’s] document production immediately.” (Bost Decl. ¶ 12, Ex. K, 3/31 email from M. McCue to W. Walters.) **Applicant said nothing whatsoever regarding the need for a meet and confer, nor did it reference any purported deficiencies in Opposer’s discovery responses.** As requested by Applicant, Opposer began its rolling document production the very next day on April 1, 2014 (but because of technical difficulties, the documents were not delivered to Applicant until April 5, 2014). (Bost Decl. ¶ 13.)

In contrast to Opposer, which provided comprehensive responses to all written discovery requests on the date agreed to by the parties and began its production of documents *before* Applicant’s Motion was filed, Applicant has not produced a single document in discovery, nor has it responded to a single written discovery request. (Bost Decl. ¶ 14.) Instead, when the agreed-upon deadline for responding to Opposer’s discovery came around on April 9, 2014, Applicant filed the instant Motion, raising trumped-up issues regarding Opposer’s discovery responses that Applicant had never mentioned before and requesting additional extensions of deadlines that had already been extended at Applicant’s request, rather than honor its agreement (and obligation) to respond to Opposer’s discovery requests. In effect, Applicant has sought to stonewall Opposer from the beginning by refusing to provide any discoverable information whatsoever. This Motion is simply the latest in a long string of attempts by Applicant to further



delay the proceedings and mask its own refusal to provide discovery responses of any kind in this case.

### **III. APPLICANT'S MOTION TO COMPEL SHOULD BE DENIED**

#### **A. APPLICANT'S MOTION TO COMPEL IS PROCEDURALLY IMPROPER**

As the above recitation of facts makes clear, Applicant never adequately met and conferred with Opposer as required under the FRCP and TBMP regarding Opposer's allegedly deficient discovery responses. According to FRCP 37(a)(1), a motion to compel "must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Likewise, TBMP §§ 523.02 and 524.02 both hold that a motion to compel and a motion to test the sufficiency of responses "must be supported by a written statement from the moving party that such party or its attorney has made a good faith effort, by conference or correspondence, to resolve with the other party or its attorney the issues presented in the motion, and has been unable to reach agreement." In prior decisions, the Board has elucidated what constitutes a proper meet and confer effort:

[W]here the parties disagree as to the propriety of certain requests for discovery, they are under an obligation to get together and attempt in good faith to resolve their differences and to present to the Board for resolution only those remaining requests for discovery, if any, upon which they have been unable, despite their best efforts, to reach an agreement. Inasmuch as the Board has neither the time nor the personnel to handle motions to compel involving substantial numbers of requests for discovery which require tedious examination, it is generally the policy of the Board to intervene in disputes concerning discovery, by determining motions to compel, only where it is clear that the parties have in fact followed the aforesaid process and have narrowed the amount of disputed requests for discovery, if any, down to a reasonable number.

*Sentrol, Inc. v. Sentex Systems, Inc.*, 231 U.S.P.Q. 666, 668 (TTAB 1986). *See also Amazon Technologies Inc. v. Wax*, 93 U.S.P.Q.2d 1702, 1705 (TTAB 2009), *citing Nevada Power Co. v. Monsanto Co.*, 151 F.R.D. 118, 120 (D. Nev. 1993) ("In order for the meet and confer process to

be meaningful and serve its intended purpose, ‘the *parties* must present to *each other* the merits of their respective positions with the same candor, specificity, and support during informal negotiations as during the briefing of discovery motions.’”) (emphasis in original).

Applicant has clearly not adequately met and conferred with Opposer regarding its purportedly deficient discovery responses. Applicant **never** specified which of Opposer’s responses it believed deficient, much less the basis for any such belief, prior to the filing of its Motion. Instead, Applicant only generally mused, on occasion, that the parties – as an alternative to settlement discussions – should meet and confer regarding Opposer’s discovery responses. Opposer first became aware of the substance of Applicant’s disputes with Opposer’s discovery responses when it was served with Applicant’s Motion. This plainly fails Applicant’s obligation to specifically present to Opposer the merits of its position during the meet and confer process, in order that the parties’ disputes may be whittled down to those which are incapable of informal resolution. Accordingly, Applicant’s Motion should be denied in its entirety because of its abject failure to meaningfully and sufficiently meet and confer with Opposer.

Also, Applicant’s Motion for relief with respect to the purported deficiencies of Opposer’s RFA responses should have been raised in a motion to test the sufficiency of responses to the RFAs as set forth in TBMP § 524, not a motion to compel. *See* TBMP § 523.01 (“The motion to compel procedure is not applicable to requests for admission. The procedure to be followed in the case of requests for admission is as set forth in 37 CFR § 2.120(h) and Fed. R. Civ. P. 36(a) and see TBMP § 411.03 (Requests for Admission) and TBMP § 524.”) Not only has Applicant failed to meet and confer with Opposer regarding its allegedly deficient RFA responses, but Applicant has failed to seek relief through the proper procedural vehicle. Applicant’s Motion to compel relief with respect to Opposer’s allegedly deficient RFA responses is, thus, procedurally deficient for multiple reasons, both of which are grounds for summarily denying it.

**B. EVEN IF THE MOTION WERE NOT PROCEDURALLY BARRED, APPLICANT STILL WOULD NOT BE ENTITLED TO ANY RELIEF WITH RESPECT TO OPPOSER'S INTERROGATORY RESPONSES**

1. Interrogatory No. 4

This interrogatory asks Opposer to “[e]xplain whether the CULTUREPOP Mark as used by Opposer is descriptive or inherently distinctive and state all facts supporting Opposer’s position.” As Opposer noted in its objections, this interrogatory is objectionable for a variety of reasons, including but not limited to, the fact that it seeks premature expert discovery, calls for a legal conclusion, and seeks information not relevant to the claims or defenses of either party<sup>2</sup>, nor likely to lead to the discovery of admissible evidence. Subject to and without waiving these valid objections, Opposer responded that “The mark CULTUREPOP is not descriptive as evidenced by the PTO’s allowance of the application without a descriptiveness refusal or a Section 2(f) requirement”—providing *precisely* the information called for by this Interrogatory. (Bost Decl. ¶ 4, Ex. B.)

Applicant argues, albeit entirely without support, that this response “does not answer the question asked,” presumably because “[i]t does not address any of the ways in which Opposer has used the CULTUREPOP mark or discuss whether any such use is descriptive.” To answer Interrogatory No. 4, however, it is not necessary to specifically address all of the ways in which Opposer claims to have used the CULTUREPOP Mark. In Opposer’s view, **none of the ways in which the CULTUREPOP Mark is used** by Applicant is descriptive for the reasons stated in Opposer’s response. Accordingly, Opposer has responded fully and completely to Interrogatory No. 4 and nothing more is required.

2. Interrogatory Nos. 2, 5-9 and 14-15

Applicant takes issue with Opposer’s assertion of its right under FRCP 33(d) to produce business records reflecting its answers to these Interrogatories. As a preliminary matter, Applicant’s Motion is procedurally deficient because it does not individually recite and address

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<sup>2</sup> Indeed, Applicant has not challenged Opposer’s rights in the CULTUREPOP mark.

each of the Interrogatories at issue but, instead, deals with them *en masse*. Applicant's Motion assumes that each of the issues facing the Interrogatories at issue are identical, when they most clearly are not.

Applicant's Motion fails to take into account that, with respect to Interrogatory Nos. 8, 9, 14, and 15, Opposer provided written responses in addition to asserting its right under FRCP 33(d) to produce business records:

- In response to Applicant's overbroad Interrogatory No. 8 – "[d]escribe in detail Opposer's promotional, marketing and advertising plans and activities for goods and services offered under the CULTUREPOP Mark" – Opposer answered that it "promotes and has promoted its CULTUREPOP mark on air and through its websites, social media, and word of mouth." Pursuant to FRCP 33(d), Opposer agreed to produce "representative samples of promotional, marketing, and advertising plans and activities for the goods and services offered under the CULTUREPOP Mark." (Bost Decl. ¶ 4, Ex. B.)
- In response to Applicant's overbroad Interrogatory No. 9 – "[d]escribe the consumers for Opposer's goods and services offered under the CULTUREPOP Mark" – Opposer answered that it "believes that the demographics for its CULTUREPOP services include adults in an age group ranging from 25 to 44 years of age." Pursuant to FRCP 33(d), Opposer agreed to produce business records "sufficient to identify the consumers of Opposer's goods and services offered under the CULTUREPOP Mark." (*Id.*)
- In responses to Applicant's overbroad and duplicative Interrogatory Nos. 14 and 15 – "[l]ist all domain names and social media user names (including on Facebook, Twitter, Instagram, and YouTube) that you own or use that contain the CULTUREPOP Mark or any element thereof" and "[i]dentify with specificity all media (including, without limitation, social media, websites, television, radio and print) that you use to promote the CULTUREPOP Mark or any goods or services offered under the CULTUREPOP Mark, including, without limitation, names of television channels; names of social media sites, including Facebook, Twitter, Instagram, and YouTube; and the like" – Applicant specifically identified 5 of Opposer's ovationtv.com domain names, 25 links to YouTube videos, a Twitter username, an Instagram username, a Pinterest username, and a link to a Facebook page. (*Id.*)

As to these Interrogatories, Applicant cannot be heard to complain that Opposer has asserted its rights under FRCP 33(d) as a means by which to avoid its discovery responsibilities. On the

contrary, Applicant provided written answers to these responses *in addition* to asserting its rights under FRCP 33(d).

With respect to Interrogatory No. 5, there can be no doubt that Opposer has sufficiently invoked its rights under FRCP 33(d). With this Interrogatory, Applicant requests that Opposer “[i]dentify all goods and services for which Opposer has used the CULTUREPOP mark and the date of first use in commerce for each.” In its response, Opposer, pursuant to FRCP 33(d), points Applicant specifically “to the Statement of Use filed for [Opposer’s] application to register CULTUREPOP, Serial No. 85/096252,” (*Id.*) which document Opposer produced to Applicant in this matter. (Bost Decl. ¶ 13.) In addition, Opposer produced documents showing how the mark CULTUREPOP has been used, which includes those goods and services identified in its Statement of Use and other services. (*Id.*) In short, Opposer sufficiently responded to Interrogatory No. 5.

Interrogatory No. 2 asks Opposer to “[i]dentify all facts supporting or relating to Opposer’s decision to adopt the CULTUREPOP Mark.” This interrogatory is overbroad, vague, and ambiguous, among other objections, including privilege. Opposer expressly conditions its response as being “to the extent [it] understands the Interrogatory.” (Bost Decl. ¶ 4, Ex. B.) Had Applicant adequately met and conferred with Opposer, Opposer might have a better idea of what information Applicant is seeking with this Interrogatory (and if this information is discoverable), particularly information responsive to “facts supporting . . . Opposer’s decision to adopt the CULTUREPOP Mark.” Obviously, Applicant is not entitled to privileged information about the *decision* to adopt the mark CULTUREPOP. *See* TBMP §414(6). Given the shortcomings of the Interrogatory, Opposer reasonably asserted FRCP 33(d) and generally designated documents reflecting the information sought in this Interrogatory as it reasonably interpreted it. Opposer is still determining if it is in possession of documents from which its response to the Interrogatory, as it understands it, can be summarized.

Finally, Interrogatory Nos. 6 and 7 ask Opposer to “[i]dentify all goods and services for which Opposer intends to use the CULTUREPOP mark and state all activities undertaken by

Opposer to prepare to commence such use,” and, for each such good and service, “to explain in detail whether each such good or service is related to art, music, or other forms of popular culture.” Among other objections, Opposer specifically objects to the burdensomeness and overbreadth of these Interrogatories “particularly in that [they] seek[] to impose an unreasonable obligation on Opposer with respect to numerous, separate goods and services.” Applicant, of course, never met and conferred with Opposer regarding this objection, and does not address it in its Motion. Furthermore, the phrase “intends to use” is vague and subject to interpretation, the burden of which is on Applicant, not Opposer. Also, the question of whether the goods and services for which Opposer intends to use its marks are related to art, music, or other forms of popular culture presupposes an agreement as to what constitutes “popular culture” and the definition thereof. The definition of the term “popular culture,” however, is open to interpretation and may, in fact, be the proper subject of expert testimony. Finally, Applicant cannot establish the relevance of Opposer’s intent to use its marks on other goods and services given that Opposer’s claim of likely confusion is based on its use of the mark and application to register the mark CULTUREPOP, which has recently matured to registration, much less its belief as to the relationship between said goods and services, on the one hand, and arts, music, or other forms of popular culture, on the other hand. Given the shortcomings of the Interrogatories, Opposer reasonably asserted FRCP 33(d) and generally designated documents reflecting the information sought in the Interrogatories as it reasonably interpreted them. Opposer is still determining if it is in possession of documents from which its responses to these Interrogatories, as it understands them, can be summarized.

**C. EVEN IF THE MOTION WERE NOT PROCEDURALLY BARRED, APPLICANT STILL WOULD NOT BE ENTITLED TO ANY RELIEF WITH RESPECT TO OPPOSER’S RESPONSES TO THE RFPS**

1. Applicant’s Request for an Order Requiring The Production of Documents With Respect to RFP Nos. 1-3, 5-12, 15-22, and 25-26 Is Unnecessary, As Opposer Has Already Begun Its Production Of Documents

Opposer has not refused to produce documents to Applicant. As Applicant itself admits, Opposer has already produced more than 400 pages of documents to Applicant as part of its rolling production. The facts reflect Opposer's compliance with its discovery obligations. Under these circumstances, there is no reason to compel Opposer's compliance; Opposer is complying. Contrary to Applicant's presentation of the facts, it is Applicant – not Opposer – that has shirked its discovery obligations by failing to timely respond at all to Opposer's discovery requests. Applicant is attempting to portray itself as the more reasonable party, when, in fact, just the opposite is true. Thus, it is Applicant's failure to produce documents and respond to discovery requests—not Opposer's—that needs to be addressed by Order of the Board. Clearly, Applicant is straining to manufacture issues where none actually exist in a transparent effort to deflect attention from its own discovery shortcomings.

## 2. RFP No. 4

RFP No. 4 requests “[a]ll documents referring or relating to Opposer’s decision to apply for a registration of the CULTUREPOP Mark.” Opposer objected on numerous grounds, including on the grounds that the request is overbroad, unduly burdensome, oppressive, vague, ambiguous, seeks privileged information, and irrelevant to the claims and defense in this case and not calculated to lead to the discovery of admissible evidence. (Bost Decl. ¶ 4, Ex. C.) Applicant conclusorily dismisses these objections in its Motion without argument. This is because, at a minimum, Applicant cannot establish why Opposer’s decision to apply for registration of its mark is remotely relevant to whether its mark is likely to be confused with Opposer’s mark.

In support of its RFP, Applicant relies entirely on TBMP § 414(4) and three cases that have no application here. Applicant’s reliance on TBMP § 414(4) is unavailing, as it supports only the generic proposition that “[i]nformation concerning a party’s selection and adoption of ***its involved mark*** is generally discoverable (***particularly of a defendant***).” (emphasis added.) Because the “involved mark” in this case is *Applicant’s* Mark, POP OF CULTURE, documents

relating to *Opposer's* decision to use, much less apply for registration of, the CULTUREPOP Mark have no bearing on the issues in this case. Applicant's cited authority does not hold otherwise.

Each case cited by Applicant relates to information related to the circumstances relating to the *adoption and use* of a mark, not the circumstances underlying the *registration* of a mark. In *Varian Associates v. Fairfield-Noble Corp.*, 188 U.S.P.Q. 581, 583 (TTAB 1975), the Board holds that that the identification of individuals "who are most knowledgeable concerning the circumstances surrounding the adoption and selection of mark" is relevant.<sup>3</sup> The same was true in *Volkswagenwerk Aktiengesellschaft v. MTD Products Inc.*, 181 U.S.P.Q. 471, 473 (TTAB 1974), in which the Board upheld the opposer's right to "request that applicant furnish the names and business addresses of the person or persons who first suggested use by applicant of the mark" at issue. Likewise, in *Goodyear Tire & Rubber Co. v. Tyrco Indus.*, 186 U.S.P.Q. 207, 208 (TTAB 1975), the Board rejected the applicant's claim that the "identity of all documents in applicant's possession, custody or control which relate to the evolution, selection, trademark searching, clearance and/or evaluation of" the mark at issue was irrelevant. Applicant's RFP No. 4 is distinguishable from the foregoing cases because it seeks documents reflecting the circumstances surrounding Opposer's **decision** to *apply for registration* of the mark. RFP No. 4 has nothing to do with the identity of such knowledgeable employees and seeks information well beyond the scope of the discovery requests at issue in the cited cases. Again, Applicant is also not entitled to any privileged information or documents concerning its decision to register its pled mark.

Opposer has complied with its discovery obligations, and nothing more is required.

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<sup>3</sup> *Varian* is the only case cited by Applicant that addresses an opposer's – as opposed to an applicant's – obligation to respond to discovery requests relating to adoption and use of its mark. Again, in *Varian*, the interrogatory sought the identification of individuals knowledgeable as to the opposer's adoption and selection of its marks, not its registration. In any event, the Board in *Varian* denied the applicant's motion to compel in its entirety because, as here, the applicant failed to comply with its obligation to meet and confer prior to the filing of the motion. *Id.* at 584.



3. RFP No. 13

RFP No. 13 requests “[a]ll documents reflecting Opposer’s use of the phrase ‘pop culture’ or ‘popular culture’ in connection with any goods or service offered under the CULTUREPOP Mark.” Opposer objected on numerous grounds, including on the grounds that the request is overbroad, unduly burdensome, oppressive, vague, ambiguous, and irrelevant to the claims and defense in this case and not calculated to lead to the discovery of admissible evidence. (Bost Decl. ¶ 4, Ex. C.) Again, Applicant conclusorily and inappropriately dismisses these objections in its Motion without argument.

Applicant’s request is irrelevant and constitutes a collateral attack on the validity of Opposer’s registration of CULTUREPOP. Applicant has not challenged Opposer’s rights in CULTUREPOP on any basis, much less on the grounds that it is merely descriptive. Opposer’s registration of CULTUREPOP is prima facie evidence of, among other things, “the validity of the registered mark.” 15 U.S.C. § 1057(b). Absent initiating a challenge to Opposer’s rights, Applicant is precluded from attacking the validity of Opposer’s mark.

4. RFP No. 14

RFP No. 13 requests “[a]ll documents reflecting the content of Opposer’s television programming offered under the CULTUREPOP mark, including, without limitation, scripts and transcriptions.” Again, Applicant conclusorily and inappropriately dismisses the many valid objections raised by Opposer without argument. (Bost Decl. ¶ 4, Ex. C.)

This RFP is overbroad. Applicant cannot establish any admissible evidence relevant to the parties’ claims and defenses likely to be elicited by the production of scripts and transcriptions of television programs offered under the CULTUREPOP mark that is not elicited by documents reflecting synopses and the general content of the programs. Having not met and conferred, Applicant has not afforded Opposer the opportunity to determine Applicant’s basis, if any, for requesting such documents. As it stands, the RFP is overbroad and not reasonably calculated to lead to the discovery of admissible evidence in light of the parties’ claims and defenses.

5. RFP Nos. 23 and 24

These RFPs seek all documents “reflecting any association between” Opposer's mark and “pop culture” and “popular culture,” respectively. Applicant’s RFPs are vague, ambiguous, and unintelligible, and Opposer timely objected to them on these and other bases. (Bost Decl. ¶ 4, Ex. C.) Applicant’s RFPs presuppose an agreement or understanding between the parties as to what constitutes “pop culture” and “popular culture” and their definitions. However, these terms are open to interpretation and may, in fact, be the proper subject of expert testimony. More confusingly, Applicant’s successive RFPs suggest that the terms “pop culture” and “popular culture” have different meanings. Because Applicant refused to meaningfully meet and confer with Opposer, the parties have not had occasion to determine what, in fact, Applicant means by these terms and what documents it believes are responsive to the requests. In the face of such vague and ambiguous RFPs, Opposer should not be forced to read Applicant’s mind.

**D. EVEN IF THE MOTION WERE NOT PROCEDURALLY BARRED, OPPOSER STILL WOULD NOT BE ENTITLED TO ANY RELIEF WITH RESPECT TO APPLICANT’S RESPONSES TO RFAS**

1. RFA Nos. 2-4, 19-34, 63, 67-73, and 77-84

Opposer’s responses to these RFAs comply with FRCP 36(a)(4), which permits a respondent to “assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.” In response to each of these RFAs, Opposer – in good faith – expressly states that it made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny. (Bost Decl. ¶ 4, Ex. D.) On their face, Opposer’s responses comply with FRCP 36(a). *C.f. Han v. U.S. Dep’t of Agriculture*, 580 F. Supp. 1564, 1566 (D.N.J. 1984) (cited by Applicant; respondent responded to requests for admission that “he has ‘insufficient information to admit or deny same as defendant has refused to provide discovery in this regard.’ On its face, this response is inadequate under Rule 36(a)”; *see also A. Farber & Partners, Inc. v. Garber*, 237 F.R.D. 250, 255-56 (C.D. Cal. 2006) (cited by Applicant; “all defendants responded to numerous other

requests for admissions by stating either they are ‘without sufficient information to either admit or deny th[e] request’ or they are ‘without sufficient information to admit or deny th[e] request, as Responding Party does not recall . . .’ All of defendants’ responses of insufficient information do **not** comply with Rule 36(a) since defendants do **not** state they ‘made a reasonable inquiry’ to obtain the information needed to respond to these requests!’) (emphasis in original). Opposer has no obligation, in its RFA responses, to disclose the details of its reasonable inquiry, and Applicant has not identified any authority binding on the Board stating otherwise.

Applicant has not established that Opposer’s responses to the RFAs were not made in good faith. Applicant cannot expect Opposer to redeem Applicant’s overbroad, ambiguous, and confusing RFAs, which seek information outside of Opposer’s personal knowledge, by Opposer’s compliance with FRCP 36. Opposer has no responsibility to obtain information from third parties to respond to RFAs. *See T. Rowe Price Small–Cap Fund, Inc. v. Oppenheimer & Co., Inc.*, 174 F.R.D. 38, 43 (SDNY 1997) (“Generally, a ‘reasonable inquiry’ is limited to review and inquiry of those persons and documents that are within the responding party’s control.”). Although Applicant’s Motion only specifically addresses a few of the RFAs at issue (likely in an effort to hide from the Board their deficiencies), Opposer addresses each of them by category below:

- RFA Nos. 2-4 request Opposer to admit certain facts regarding the general public’s knowledge of, and the definition of, the terms “pop culture” and “popular culture.” Applicant has not made any showing that a reasonable inquiry by Opposer of the information available to it would allow it to unequivocally admit or deny these broad pronouncements, e.g., whether “pop culture” is a “well-known phrase in the United States.”
- RFA Nos. 19-26 request Opposer to admit that certain expansive, ambiguous terms – “entertainment,” “theater,” “art,” “the visual arts,” “new music,” “emerging artists,” “influential artists,” and “innovators” are each “considered part of popular culture.” RFA Nos. 27-34 are identical to RFA Nos. 19-26. Applicant does not identify whose consideration is at issue and does not define the foregoing broad, ambiguous terms. Again, Applicant has not made any showing that a reasonable inquiry by Opposer of the information available it would allow it to unequivocally admit or deny these broad pronouncements, e.g. whether “entertainment” is “considered” part of popular culture.

- RFA No. 63 requests Opposer to admit that “prior to August 2010, third parties used ‘pop culture’ to describe popular culture.” This RFA is, on its face, vague for reasons stated above, and use of the term “describe” is vague and ambiguous. In this light, Applicant does not identify any reason why Opposer’s reasonable inquiry would elicit information allowing it to unequivocally admit or deny that third parties used “pop culture” to “describe popular culture.”
- RFAs Nos. 67-73 request Opposer to admit that certain, undefined things – *i.e.*, “<CulturePop.me>,” “the Culture Pop show by John Badesow,” “the Culture Pop Mirabelle show on YouTube,” “Culture Pop Films,” “Seth Cushner’s Culture Pop 01,” “the Culture Pop Studio on Etsy,” and “the Culture Pop radio on Facebook” – predated its use of the CULTUREPOP mark. Each of these RFAs is vague and ambiguous. Applicant does not identify any reason why Opposer’s reasonable inquiry would elicit knowledge of any of these undefined things, much less when any of these things began. Furthermore, to the extent Applicant is inquiring about third party uses of the CULTUREPOP mark or marks allegedly confusingly similar thereto, it is well established that a “party’s awareness of third-party use and/or registration of the same or similar marks for the same or closely related goods or services as an involved mark, is discoverable to the extent that the responding party has actual knowledge thereof (without performing an investigation) and that the information appears to be reasonably calculated to lead to the discovery of admissible evidence.” TBMP § 414(9). Applicant does not identify any reason to believe that any of these things, to the extent they are third party uses of marks, are within Opposer’s actual knowledge. Opposer cannot be expected to issue subpoenas as part of its reasonable inquiry, particular issues on which Applicant bears the burden of production. *See Oppenheimer*, 174 F.R.D. at 44.
- RFAs Nos. 77-84 request that Opposer admit certain facts and legal conclusions related to Applicant’s alleged “E! Mark.” Applicant has not established any reason to believe that Opposer has knowledge of or can readily obtain knowledge of Applicant’s intellectual property rights, much less for a mark not at issue in the parties’ dispute, sufficient to unequivocally admit or deny these RFAs. These facts are, of course, within Applicant’s personal knowledge and remain its burden to establish. *See Kendrick v. Sullivan*, 1992 WL 119125, at \*3 (D.D.C. May 15, 1992) (review of documentary evidence in plaintiff’s possession was sufficient to constitute reasonable inquiry, and, where information was in the hands of the adversary or adverse third parties, it was proper to conclude that they could not admit or deny the requests).

The cases cited by Applicant only establish that a lack of knowledge is an inappropriate assertion when a request seeks admission of facts readily and demonstrably within the personal knowledge of the respondent or the proponent of the request can otherwise establish bad faith.

In *Asea, Inc. v. Southern Pac. Transp. Co.*, 669 F.2d 1242, 1244-45 (9th Cir. 1981), the

propounding party propounded requests for admission on the defendant, a railroad, regarding facts related to an electrical transformer in the railroad's possession at the time of its failure. Not only did the RFAs seek information in the personal knowledge of the railroad, but the railroad admitted as much, responding "We may possibly, Your Honor" to the court's question as to whether the railroad had subsequently learned information enabling it to supply more appropriate answers. *Id.* at 1245. Under these circumstances, the railroad could not in good faith claim that its reasonable inquiry was fruitless. For the reasons established above, the instant case is readily distinguishable.

2. RFA Nos. 9-18, 37-47, 49-50, 53-57, 64-66, and 74

All of these RFAs are objectionable for a variety of reasons. However, the vast majority of them are incapable of unequivocal admission or denial, or even reasonable inquiry, because they use the term "Media," which, as defined by Applicant, results in the RFAs being compound. In its RFAs, Applicant stated that the "term 'Media' refers to the television programming, websites and/or electronic publications." (McCue Decl. ¶ 7, Ex. D.) Consequently, the term "Media" as it appears throughout the RFAs is inconclusive and compound. *See* FRCP 36(a)(2) ("Each [RFA] must be separately stated"); *Havenfield Corp. v. H & R Block, Inc.*, 67 F.R.D. 93, 96–97 (W.D. Mo. 1973). ("a requesting party should not state 'half of fact' or 'half truths' which require the answering party to qualify responses"); Rutter Group Practice Guide: Federal Civil Procedure Before Trial, Calif. & 9th Cir. Editions ¶ 11:1991 ("RFAs may not contain compound, conjunctive, or disjunctive (e.g., 'and/or') statements.")

Applicant's RFA No. 57 – "[a]dmit that the CULTUREPOP Mark is not the same as 'pop culture'" – is objectionable for a variety of reasons, but is incapable of response because it is, on its face, unintelligible.

Applicant's RFA No. 74 – "[a]dmit that you have not used the CULTUREPOP Mark in connection with all of the goods and services identified [in] Serial No. 85096252" – is irrelevant

because it constitutes a collateral attack on the validity of Opposer's registration of CULTUREPOP.

3. RFA No. 48

Applicant's issue with Opposer's response to this RFA – which asks Opposer to “[a]dmit that you describe television programming offered under the CULTUREPOP Mark as relating to popular culture” – is purely semantic. Opposer's response that “CulturePop . . . is described as offering a daily culture content service” is not meant to be ambiguous and reflects Opposer's, not a third party's, description of its service. (Bost Decl. ¶ 4, Ex. D.) Again, this is the sort of matter that could have been cleared up had Applicant satisfied its meet and confer obligations.

4. RFA Nos. 51 and 52

Opposer's responses to these RFAs – which ask Opposer to “[a]dmit that you do not own trademark rights in ‘popular culture’” or “pop culture” – are reasonable given their vagueness and ambiguity and the fact that they seek a legal conclusion. Applicant does not clarify what it means by “trademark rights,” and the terms “popular culture” and “pop culture,” as used by Applicant, do not clearly and unambiguously refer to word marks. Further, Applicant apparently seeks an admission of trademark rights in undefined terms with undefined goods and services. The impropriety of these RFAs is obvious on their face.

5. RFA Nos. 75 and 76

Opposer's responses to these RFAs – which ask Opposer to “[a]dmit that you are not aware of actual confusion among consumers arising from [Applicant's] use of the POPULAR CULTURE Mark” and “E POP OF CULTURE Mark” – are not evasive. The RFAs, by their nature, request Opposer's admission or denial as of the day of its response thereto, i.e., “as of yet.” Thus, by appending the term “as of yet” to its responses, Opposer is not changing or altering the substance of its admission.

**E. APPLICANT IS NOT ENTITLED TO ANY FURTHER EXTENSION OF ITS TIME TO SERVE RESPONSES TO OPPOSER’S DISCOVERY REQUESTS**

Since the beginning, Applicant has pushed Opposer to respond to Applicant’s discovery requests, while at the same time, attempting to defer all of its own discovery obligations and stonewall Opposer’s efforts to obtain discoverable information. Whereas Opposer responded to all of Applicant’s discovery requests within the time frame agreed to by the parties (67 days), Applicant sought and obtained from Opposer not only reciprocal extensions of time, but also extensions *in excess* of what Applicant was willing to give Opposer, for a total of 75 days. When that time expired on April 9, 2014, rather than respond to Opposer’s discovery as Applicant had agreed (and was obligated) to do (*see* Bost Decl. ¶ 12, Ex. K, 3/31 email from M. McCue to W. Walters), Applicant filed the instant Motion, raising trumped-up issues regarding Opposer’s discovery responses that Applicant had never mentioned before and belatedly requesting an additional 30 days to respond to the outstanding discovery that was served back in January and February 2014. Applicant’s Motion did not, however, toll the time for Applicant to respond to Opposer’s outstanding discovery requests, as Applicant was never granted an extension of the April 9, 2014 deadline (by Opposer or the Board), and cannot unilaterally grant one unto itself. *See* TBMP § 510; 37 CFR § 2.120(e)(2).<sup>4</sup>

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<sup>4</sup> Applicant’s attempt to rely upon the purported deficiencies in Opposer’s discovery responses does not save Applicant from the effects of its failure to timely respond to Opposer’s discovery requests, as the TBMP makes clear that the parties’ respective obligations to provide discovery responses are separate from, and independent of, each other. *See* TBMP § 401.02 (“[A] party is not relieved of its obligation to make or supplement initial disclosures merely because it may not have received such disclosures or supplementation from an adverse party or parties”); TBMP § 402.01 (“Each party has a duty not only to make a good faith effort to satisfy the discovery needs of its adversary, but also to make a good faith effort to seek only such discovery as is proper and related to the specific issues involved in the proceeding”); TBMP § 403.03 (“[E]ach party is under an obligation to respond to an adversary’s request for discovery during the time allowed therefor under the applicable rules, *irrespective of the sequence of requests for discovery, or of an adversary’s failure to respond to a pending request for discovery*”) (emphasis added); TBMP § 408.01 (“Discovery before the Board is not governed by the concept of priority of discovery—that is, a party is not relieved of its discovery obligations, including its duty to cooperate, *in spite of the fact that an adverse party wrongfully may have failed to fulfill its own obligations*”) (emphasis added); *Miss America Pageant v. Petite*

Applicant's failure to serve written responses is in contravention of FRCP 33(b)(2) and 34(b)(2), which require a party to serve responses and/or objections to requests for production and interrogatories within 30 days of service or such time as agreed to by the parties.

Accordingly, Applicant has waived all of its objections thereto, and must immediately serve written responses to the RFPs and Interrogatories without objection and produce all documents in its possession, custody, or control responsive to the RFPs. See TBMP §§ 405.04(a), 406.04(a); *Crane Co. v. Shimano Industrial Co.*, 184 U.S.P.Q. 691, 691 (TTAB 1975). Applicant may not refuse to produce documents on the basis of any objection, nor may it resurrect any objections it is deemed to have waived by responding to the discovery requests after the deadline to respond has passed.

By filing this Motion on the day it was required to serve its responses to Opposer's outstanding discovery, Applicant gave itself a *de facto* extension of time that it was unable to extract from Opposer. This tactic constitutes an abuse of the FRCP and TBMP. For all of these reasons, Applicant is not entitled to any further time to respond to Opposer's discovery requests and should be ordered to immediately provide written responses to the Opposer's RFPs and Interrogatories *without objection* and produce *all* documents in its possession, custody, or control responsive to the RFPs.

**F. OPPOSER DOES NOT OBJECT TO APPLICANT'S REQUEST FOR A FURTHER EXTENSION OF ALL REMAINING CASE MANAGEMENT DEADLINES**

It is clear from Applicant's conduct that Applicant is more interested in delaying, rather than litigating, this proceeding to avoid expense to itself and increase litigation costs to Opposer.

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*Productions, Inc.*, 17 U.S.P.Q.2d 1067, 1070 (TTAB 1990) (“[T]he Board has taken the position that a party is not relieved of its discovery obligations in spite of the fact that its adverse party has wrongfully failed to fulfill its own obligations ... This is so even if the adverse party has failed to provide any response to discovery”); *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 231 U.S.P.Q. 626, 632-33 (TTAB 1986) (finding that applicant was not acting in good faith when it advised opposer that applicant had not responded to opposer's discovery request “because opposer had not cooperated in discovery and had served clearly evasive answers” to interrogatories.)



That said, Applicant's abusive discovery tactics have thwarted Opposer's ability to obtain the information it needs to prosecute its claims and to discuss settlement.<sup>5</sup> For this reason, Opposer does not object to the requested extension of case management deadlines, so long as Applicant is ordered to immediately provide discovery responses as outlined in Section E above.

**IV. CONCLUSION**

For all of the above reasons, Applicant's Motion should be denied in its entirety.

Respectfully submitted,

Dated: April 29, 2014

/s/Paul A. Bost  
\_\_\_\_\_  
Jill M. Pietrini  
Whitney Walters  
Paul A. Bost  
Sheppard Mullin Richter & Hampton LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067  
Telephone: 310.228.3700

Attorneys for Opposer Ovation, LLC

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<sup>5</sup> Despite Applicant's conduct, as Opposer told Applicant in March 2014, it is endeavoring to outline a potential settlement with Applicant without Applicant's discovery responses. However, Opposer's settlement position may obviously change once it receives Applicant's discovery responses, *e.g.*, if there is evidence of intent to trade on Opposer's goodwill.

### **DECLARATION OF PAUL A. BOST**

I, Paul A. Bost, declare as follows:

1. I am an attorney duly licensed to practice before the Board. I am an associate in the law firm of Sheppard Mullin Richter Hampton, LLP, counsel of record for Opposer in this matter. I have personal knowledge of the facts set forth in this declaration, and if called to testify, I could and would testify competently thereto.

2. On November 12, 2013, Applicant served its first set of discovery requests on Opposer, consisting of Applicant's Interrogatories, RFPs, and RFAs.

3. On December 3, 2013, Whitney Walters, counsel for Opposer, requested a 30-day extension of time for Opposer to respond to Applicant's discovery requests in light of some medical issues she and Jill Pietrini, counsel for Opposer, were having. Specifically, Ms. Walters is pregnant with twins and Ms. Pietrini had significant foot surgery in late October 2013. In response, Michael McCue, counsel for Applicant, initially attempted to extract from Opposer an agreement that Opposer would not serve any discovery requests on Applicant until Opposer responded to the outstanding discovery requests, but ultimately agreed to the requested 30-day extension on the condition that Opposer grant Applicant a reciprocal 30-day extension of time to respond to any discovery served by Opposer, which Opposer agreed to do. On January 10, 2014, Ms. Walters, on Opposer's behalf, requested one additional week for Opposer to respond to Applicant's discovery, offering the same to Applicant, if needed. Mr. McCue, on behalf of Applicant agreed to the further extension, this time on the condition that the remaining scheduling deadlines be extended by 90 days. A true and correct copy of Ms. Walters' and Mr. McCue's email correspondence reflecting the above is attached hereto as **Exhibit A**. This email correspondence has been redacted to delete any substantive settlement discussions.

4. On January 23, 2014, Opposer served its responses and objections to Applicant's Interrogatories, RFPs, and RFAs. True and correct copies of these responses are attached hereto as **Exhibits B, C, and D**, respectively.

5. On January 24, 2014, Opposer served its first set of interrogatories and requests for production on Applicant. True and correct copies of these discovery requests are attached hereto as **Exhibits E and F**, respectively.

6. On January 27, 2014, Mr. McCue, on Applicant's behalf, wrote Ms. Walters regarding Opposer's discovery responses and the need for a protective order in the case, noting that Applicant would "address [Opposer's] discovery responses in a separate email/letter after [Mr. McCue has] had a chance to review them in detail." Mr. McCue's email did not raise any substantive issues regarding Opposer's discovery responses at that time. A true and correct copy of Ms. Walters' and Mr. McCue's email correspondence reflecting the above is attached hereto as **Exhibit G**.

7. On February 6, 2014, and after the parties' stipulated protective order was entered by the Board, Mr. McCue sent an email to Ms. Pietrini and Ms. Walters requesting that Opposer begin its document production, and raised the possibility of settlement. That same day, Ms. Pietrini responded that "[i]t would be helpful to have [Applicant's] responses to our interrogatories before we discuss settlement," reminding Applicant that Opposer had "already answered all of [Applicant's] discovery and it would be a bit one-sided settlement discussion without having [Applicant's] responses." At that time, Ms. Pietrini also suggested that the parties delay their respective document productions to minimize costs on both sides. On February 10, 2014, Mr. McCue responded to Ms. Pietrini's proposal, indicating that it would "let [Opposer] know as soon as possible whether [Applicant] [wa]s willing to postpone [Opposer's] document production" and stating that it was still "reviewing [Opposer's] objections and response to [Applicant's] discovery requests and we will get back to you to discuss any additional issues." Again, Mr. McCue's email did not raise any substantive issues regarding Opposer's discovery responses. Ms. Pietrini responded to Mr. McCue on February 12, 2014, stating that Opposer would "begin [its] document production shortly," but reiterating Opposer's need for Applicant's discovery responses before the parties could broach settlement. A true and

correct copy of Ms. Pietrini's and Mr. McCue's email correspondence reflecting the above is attached hereto as **Exhibit H**.

8. On February 12, 2014, Opposer served on Applicant its first set of RFAs. A true and correct of Opposer's first set of RFAs are attached hereto as **Exhibit I**.

9. On February 14, 2014, Mr. McCue emailed Ms. Pietrini and Ms. Walters regarding settlement and discovery. Although Mr. McCue noted that Opposer had not yet produced documents, he proposed that the parties completely suspend the proceedings for a period of 120 days to enable them to engage in settlement discussions, and further proposed that Applicant's document production and written discovery responses be deferred until *after* the settlement discussions concluded and the proceedings resumed. Mr. McCue also noted that "E! is not going to unnecessarily incur fees in responding to requests that are artificially tied to commencing settlement discussions." Again, Mr. McCue raised no issues whatsoever with the sufficiency of Opposer's discovery responses, aside from noting that Opposer had not yet produced documents in connection with Applicant's RFPs and interrogatories. On February 24, 2014, Ms. Walters responded to Mr. McCue's email and informed him that there had been a death in Ms. Pietrini's family and that she would get back to Applicant as soon as possible. Ms. Pietrini's personal issue mentioned to Mr. McCue in early February 2014 related to her stepfather's condition. Ms. Pietrini was required to be in Northern California for her father and her mother and the subsequent funeral for the majority of February.

10. On March 14, 2014, Mr. McCue inquired regarding Opposer's consideration of Applicant's proposal to suspend the proceedings, stating that "the proposal [it] conveyed is still on the table," but requesting, for the very first time, "a few dates and times that [Opposer's counsel] are available to confer on Ovation's responses to E!'s discovery request and Ovation's document production." Still, Mr. McCue made no mention of any specific issues regarding Opposer's discovery responses that it wished to address. Neither Ms. Pietrini nor Ms. Walters was unable to immediately respond to Mr. McCue, as both were in the midst of preparing for a

trial set to commence on April 7, 2014 out of state, and, on top of that, Ms. Walters was dealing with some medical issues related to her twin pregnancy.

11. Mr. McCue emailed Ms. Pietrini and Ms. Walters on March 27, 2014, requesting “an additional [30-day] extension of time to respond to [Opposer’s] discovery requests” while Applicant waited for a response to its proposal. In this email, Mr. McCue made clear that his prior request for a meet and confer regarding Opposer’s discovery responses had been made only “in the alternative” to Applicant’s proposal regarding a potential mechanism for settlement discussions. The very next day, Ms. Walters responded to Mr. McCue’s email and explained the reasons why Applicant’s one-sided proposal to suspend the proceedings was unacceptable to Opposer, namely, that it disregarded Opposer’s stated need for discovery from Applicant before fruitful settlement discussions could take place. Nonetheless, Ms. Walters informed Mr. McCue that Opposer was working on a proposed settlement offer based on its limited knowledge of Applicant’s business, and invited Applicant to forward any concrete settlement terms that it had in the meantime. Moreover, since the discovery deadline in this case had already been extended to June 7, 2014, Ms. Walters explained that Opposer “prefer[red] to keep the proceeding moving forward while the parties pursue the possibility of a good faith resolution.” As to Applicant’s request for another 30-day extension of time to respond to Opposer’s discovery, Ms. Walters noted that the current deadline “already reflect[ed] two prior reciprocal extensions of time (one for 30 days and another for 7 days).” Nevertheless, Ms. Walters, on Opposer’s behalf, offered a further 5-day extension of time to April 9, 2014, as a professional courtesy. Ms. Walters saw no need to address Applicant’s prior request for a meet and confer, since that request had been posed only as an alternative to the settlement route, which Opposer understood the parties would pursue once a mutual exchange of discovery had occurred.

A true and correct copy of Ms. Walters’ and Mr. McCue’s email correspondence reflecting the above is attached hereto as **Exhibit J**. This email correspondence has been redacted to delete any substantive settlement discussions.

12. On March 31, 2014, Mr. McCue sent an email to Ms. Walters and Ms. Pietrini indicating that Applicant would “respond to [Opposer’s] discovery requests by April 9,” but that it “must receive [Opposer’s] document production immediately.” Mr. McCue wrote nothing whatsoever regarding the need for a meet and confer, nor did he reference any purported deficiencies in Opposer’s discovery responses. A true and correct copy of Ms. Walters’ and Mr. McCue’s email correspondence reflecting the above is attached hereto as **Exhibit K**.

13. As requested by Applicant, our office began Opposer’s rolling document production the very next day on April 1, 2014. However, because of technical difficulties, the documents were not delivered to Mr. McCue, on behalf of Applicant, until April 5, 2014. One of the documents produced by Opposer to Applicant was its Statement of Use submitted to the U.S. Patent & Trademark Office (“PTO”) in support of its application to register CULTUREPOP in Classes 9, 41, and 42, Ser. No. 85/096,252. Opposer also produced documents showing how the mark CULTUREPOP has been used, which includes those goods and services identified in its Statement of Use and other services.

14. Applicant has not produced a single document in discovery to Opposer, nor has it responded to a single written discovery request of Opposer’s. Instead, when the agreed-upon deadline for responding to Opposer’s discovery came around on April 9, 2014, Applicant filed the instant Motion.

I declare all of the foregoing under the penalty of perjury under the laws of the United States of America.

Executed this 29th day of April 2014 in Los Angeles, California.

/s/ Paul A. Bost  
Paul A. Bost

# EXHIBIT A

**From:** "McCue, Michael" <MMcCue@lrrlaw.com>  
**Date:** January 12, 2014, 5:33:23 PM PST  
**To:** 'Whitney Walters' <wwalters@sheppardmullin.com>  
**Cc:** "Bunch, Tammy" <TBunch@lrrlaw.com>  
**Subject:** RE: Ovation v E! Entertainment

Yes, Whitney. Will do. Thanks, Michael

**From:** Whitney Walters [mailto:wwalters@sheppardmullin.com]  
**Sent:** Saturday, January 11, 2014 1:37 PM  
**To:** McCue, Michael  
**Subject:** Re: Ovation v E! Entertainment

Thanks so much, Michael. The extension is fine with us. Can you prepare and file the stipulation?

Whitney

On Jan 10, 2014, at 3:44 PM, "McCue, Michael" <MMcCue@lrrlaw.com> wrote:

Whitney: Wow! Congratulations on the twins. Sorry you have been sick. Let me know what Jill says. Thanks, Michael

**From:** Whitney Walters [mailto:wwalters@sheppardmullin.com]  
**Sent:** Friday, January 10, 2014 3:38 PM  
**To:** McCue, Michael  
**Subject:** RE: Ovation v E! Entertainment

Thanks, Michael. Let me confer with my partner Jill on the remaining deadlines and get back to you. We haven't yet served the discovery – I can't remember if I told you, but I'm pregnant with twins and was out sick a good portion of November and December, so I'm a little behind as a result.

**From:** McCue, Michael [mailto:MMcCue@lrrlaw.com]  
**Sent:** Friday, January 10, 2014 3:35 PM



**To:** Whitney Walters  
**Subject:** RE: Ovation v E! Entertainment

Hi Whitney: Happy new year. Yes, no problem on the additional week if we can bump out remaining deadlines another 60 or 90 days. Also, we have not received service of any discovery requests from you, but your email may imply that you have sent some. Can you let me know? Thanks, Michael

**From:** Whitney Walters [<mailto:wwalters@sheppardmullin.com>]  
**Sent:** Friday, January 10, 2014 1:45 PM  
**To:** McCue, Michael  
**Subject:** RE: Ovation v E! Entertainment

Michael,

Happy New Year. Pursuant to the parties' agreement, our discovery responses are due Thursday, January 16. Will you agree to give us an extra week to respond? We will give you the same if you need it.

Thanks,

Whitney

**From:** Whitney Walters  
**Sent:** Friday, December 06, 2013 5:52 AM  
**To:** McCue, Michael  
**Cc:** Jill Pietrini  
**Subject:** Re: Ovation v E! Entertainment

Thanks Michael. I will inquire. We will also prepare the stipulation extending the schedule by 60 days. As to discovery responses, we agree to give each other reciprocal extensions up to 30 days.

Whitney

On Dec 6, 2013, at 1:05 AM, "McCue, Michael" <[MMcCue@lrrlaw.com](mailto:MMcCue@lrrlaw.com)> wrote:

Whitney: Yes, that's fine. Wlth respect to settlement,

**From:** Whitney Walters [<mailto:wwalters@sheppardmullin.com>]  
**Sent:** Thursday, December 05, 2013 5:08 PM  
**To:** McCue, Michael  
**Subject:** RE: Ovation v E! Entertainment

Does this work for you?

Thanks,

Whitney

**From:** Whitney Walters  
**Sent:** Wednesday, December 04, 2013 3:51 PM  
**To:** 'McCue, Michael'  
**Subject:** RE: Ovation v E! Entertainment

Thanks, Michael. We were planning to serve our discovery shortly, so I can't agree not to serve discovery until we respond to yours, but if we agree to give Ovation a reciprocal extension of time to respond to ours, would that work? I will confirm that it works on our end and also confirm how much additional time we really need to respond to your discovery. I conservatively said 30 days with the holidays approaching, but it may not be that long. We would still like to extend the deadlines by 60 days in any event.

As far as settlement goes, [REDACTED]

Let me know.

Thanks,

Whitney

**From:** McCue, Michael [<mailto:MMcCue@lrrlaw.com>]  
**Sent:** Wednesday, December 04, 2013 10:01 AM  
**To:** Whitney Walters  
**Subject:** RE: Ovation v E! Entertainment

Hi Whitney: Yes, we can agree to the extensions as long as Ovation will not serve discovery requests on us until it responds to our discovery requests and agrees to a reciprocal 30-day extension of time for us to respond to Ovation's requests. If that is ok, can you prepare the stip? Also, is there any news on Ovation's settlement position?

[REDACTED]  
[REDACTED] Thanks, Michael

**From:** Whitney Walters [<mailto:wwalters@sheppardmullin.com>]  
**Sent:** Tuesday, December 03, 2013 11:27 AM  
**To:** McCue, Michael  
**Subject:** RE: Ovation v E! Entertainment

Michael,

I just returned to the office and received the discovery requests you served on November 12, 2013. I have been out of commission for the past couple of weeks for medical reasons. My partner, Jill Pietrini, has also been out of the office for the last six weeks, as she had foot surgery in late October. In light of this, I am wondering if you will consent to a 30-day extension of our time to respond to discovery and an extension of all deadlines in the scheduling order by 60 days. Please let me know if this would be acceptable.

Thanks in advance,

Whitney

-----Original Message-----

From: McCue, Michael [<mailto:MMcCue@Irlaw.com>]

Sent: Friday, August 09, 2013 1:41 PM

To: Whitney Walters

Subject: RE: Ovation v E! Entertainment

Whitney: Sure. We can use another week as well. Thanks, Michael

-----Original Message-----

From: Whitney Walters [<mailto:wwalters@sheppardmullin.com>]

Sent: Friday, August 09, 2013 1:18 PM

To: McCue, Michael

Subject: RE: Ovation v E! Entertainment

Michael,

I see that our initial disclosures are due Monday, and I need some additional time. Would you agree to a one-week extension of our time to serve them? Thanks in advance.

Best,

Whitney

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# EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>In re Matter of Application No. 85/569,798 for the mark: POP OF CULTURE</p> <p>Ovation LLC,</p> <p>Opposer,</p> <p>vs.</p> <p>E! Entertainment Television, LLC,</p> <p>Applicant.</p>	<p>Opposition No. 91-210506</p> <p><b>OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER</b></p>
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**I. PRELIMINARY STATEMENT**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure ("FRCP"), and Section 405 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Opposer Ovation LLC ("Opposer") hereby objects and responds to Applicant E! Entertainment Television, LLC's ("Applicant") First Set of Interrogatories to Opposer ("Interrogatories") as set for below.

These responses are made solely for the purposes of this action. Any response supplied to any particular Interrogatory is or will be supplied by Opposer subject to all objections as to competence, relevance, materiality, propriety, admissibility, and any and all other objections on any grounds that would require the exclusion of the response or portion thereof if such response were offered into evidence, all of which objections and grounds are hereby expressly reserved and may be interposed during testimony in this case.

No incidental or implied admissions are intended by the responses herein. The fact that Opposer has supplied or agreed to supply, or hereafter supplies or agrees to supply, a response to any particular Interrogatory should not be taken as an admission that Opposer accepts or admits the existence of any fact set forth or assumed by such Interrogatory. The fact that Opposer makes a response and/or objection to any Interrogatory is not intended, and shall not be construed, as an admission that information responsive to that Interrogatory exists or is in Opposer's possession, custody, or control.

Opposer reserves the right to make changes to these responses if it appears that omissions or errors have been made herein, or that future or more accurate information is available. Opposer has not completed its own investigation and discovery. Therefore, the following responses state Opposer's knowledge, information, and belief as of the date of such responses, and Opposer expressly reserves the right to rely upon and/or introduce into evidence at trial such additional documents or information as Opposer may discover.

## **II. GENERAL OBJECTIONS**

The following General Objections apply to each and every Interrogatory and shall have the same force and effect as if fully set forth in the response to each.

1. Opposer objects to each Interrogatory insofar as it is unintelligible, vague, overly broad, oppressive, harassing or vexatious; imposes burden or expense that outweighs its likely benefit; seeks information equally available to Opposer and Applicant; seeks information not relevant to the claim or defense of any party nor likely to lead to the discovery of admissible evidence; seeks Opposer's confidential



information; seeks information not within Opposer's possession, custody, or control; does not describe with reasonable particularity the information and/or documents requested; contains erroneous and/or contentious factual allegations or legal assertions; and/or seeks information related to facts, events or activities, or documents dated, prepared or received after the commencement of this action.

2. Opposer objects to these Interrogatories the extent they seek to impose upon Opposer burdens and obligations not contemplated by the FRCP, the TBMP, or other applicable law.

3. Opposer objects to each Interrogatory to the extent that it: (i) seeks disclosure of information and/or documents that would violate the privacy rights of individuals; or (ii) seeks disclosure of confidential business or commercial information and/or documents, trade secrets, and/or proprietary information and documents, including financial information and documents, of Opposer or third parties. To the extent that Opposer responds to the Interrogatories by stating that it will provide information that it, any party to this litigation, or any third party deems to embody material that is private, business confidential, proprietary, trade secret, or otherwise protected from disclosure pursuant to FRCP 26 or otherwise, Opposer will do so only pursuant to a protective order entered in this action.

4. Opposer's responses are made to the best of its current knowledge, information, and belief, and are made according to documents or information currently in its possession, custody, or control. Opposer does not represent that any information or documents actually exist, but that it will, as appropriate, make a good faith search

and attempt to ascertain whether information or documents responsive to these Interrogatories do, in fact, exist.

5. Opposer is responding to the Interrogatories as it interprets and understands them. If Applicant subsequently asserts an interpretation of the Interrogatories that differs from Opposer's understanding, Opposer reserves the right to supplement its objections and/or responses herein.

6. Opposer objects to the Interrogatories to the extent that they seek the identification of "all" and/or "all" persons or things pertaining to a specific subject, on the ground that such language is overly broad and unduly burdensome. To the extent that a search is required, Opposer will search those files in its possession, custody, or control where there is a reasonable likelihood that responsive information and/or documents may be located.

7. Opposer also objects to the Interrogatories on the grounds that, when all subparts are counted, it causes the cumulative number to exceed the total number of written Interrogatories that a party may serve pursuant to FRCP 33 and Section 405.03 of the TBMP.

8. Opposer makes the objections and responses set forth below without in any manner waiving: (i) the right to object to the use of any response for any purpose in this action or any other actions on grounds of privilege, relevancy, materiality, or any other appropriate basis; (ii) the right to object to any other Interrogatories involving, or relating to, the subject matter of the responses herein; (iii) the right to revise, correct, supplement, or clarify any of the responses provided below at any time; (iv) the right to assert the attorney-client privilege, work product protections, or any other applicable

privilege; and (v) the right to assert any additional or supplemental objections should additional grounds for such objections become apparent. Opposer expressly reserves the right to supplement its responses.

### **III. OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

The following Objections to Definitions and Instructions apply to each and every Interrogatory and shall have the same force and effect as if fully set forth in the response to each.

1. Opposer objects to Applicant's Definitions and Instructions to the extent they seek to use broader definitions or rules of construction than those set forth in FRCP 26 or to impose upon Opposer burdens and obligations not contemplated by the FRCP, the TBMP, or other applicable law.

2. Opposer objects to Applicant's definitions of "You" or "your"—which are defined to include "Opposer Ovation, LLC, its subsidiaries, parents, affiliates, licensees, and their respective officers, directors, employees, agents, and predecessors-in-interest"—to the extent that these definitions seek to impose on Opposer the obligation to provide information or produce documents and things not under its possession, custody, or control, or to obtain information or documents from other non-parties to the instant proceeding. Opposer will not undertake to gather or provide any such information. Opposer further objects to these definitions on the grounds that the terms as defined are vague, ambiguous, and unintelligible. For the purpose of its responses, Opposer will construe these terms to refer to Ovation, LLC only, as defined herein.

3. Opposer objects to Applicant's definition of "CULTUREPOP Mark" as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of

admissible evidence, vague, ambiguous, and unintelligible to the extent it encompasses “any trademark or service mark owned or used by Ovation containing the words ‘CULTURE’ and ‘POP,’ with or without a space between them, and alone or in connection with other letters, numbers, words or designs.”

4. Opposer objects to Applicant’s definition of “identify” as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, and unintelligible to the extent it encompasses “persons involved in or with direct or indirect knowledge of the event, occurrence or decision.” For purposes of its responses, Opposer will identify the persons most knowledgeable with direct knowledge of the events, occurrences, or decisions at issue.

#### **IV. RESPONSES TO INTERROGATORIES**

##### **INTERROGATORY NO. 1:**

Identify the persons most knowledgeable about Opposer’s adoption and use of the CULTUREPOP Mark and, for each such individual, describe in detail the nature and extent of their knowledge.

##### **RESPONSE TO INTERROGATORY NO. 1:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to the Interrogatory to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or other applicable privilege. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understand the Interrogatory, Opposer responds as follows: Person(s) Most Knowledgeable at Opposer, pursuant to FRCP § 30(b)(6), regarding the following subject matter: Rob Canter, Senior Vice President, Head of Production/Media Services (origination and transformation of the use of the CULTUREPOP Mark); Evan Minskoff, Senior Vice President, Head of Marketing & Brand Strategy (marketing of the CULTUREPOP Mark); and Shaw Bowman, GM, Digital Media (online use of the CULTUREPOP Mark).

Opposer has not completed its own investigation and discovery. Therefore, this response states Opposer's knowledge, information, and belief as of the date hereof, and Opposer expressly reserves the right to amend this response or to rely upon and/or introduce into evidence at trial additional information that Opposer may discover.

**INTERROGATORY NO. 2:**

Identify all facts supporting or relating to Opposer's decision to adopt the CULTUREPOP Mark.

**RESPONSE TO INTERROGATORY NO. 2:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege

and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control from which the information sought in this Interrogatory may be derived or ascertained, once a suitable protective order has been entered.

**INTERROGATORY NO. 3:**

State the meaning of the CULTUREPOP Mark as used by Opposer.

**RESPONSE TO INTERROGATORY NO. 3:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information equally available to Applicant, and seeks premature

expert discovery. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds as follows: There is no particular meaning for the mark CULTUREPOP.

**INTERROGATORY NO. 4:**

Explain whether the CULTUREPOP Mark as used by Opposer is descriptive or inherently distinctive and state all facts supporting Opposer's position.

**RESPONSE TO INTERROGATORY NO. 4:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information equally available to Plaintiff, and seeks premature expert discovery. Opposer also objects to this Interrogatory on the grounds that it calls for a legal conclusion. Opposer also objects to this Interrogatory on the grounds that it

seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving such objections, Opposer responds as follows:

The mark CULTUREPOP is not descriptive as evidenced by the PTO's allowance of the application without a descriptiveness refusal or a Section 2(f) requirement.

**INTERROGATORY NO. 5:**

Identify all goods and services for which Opposer has used the CULTUREPOP mark and the date of first use in commerce for each.

**RESPONSE TO INTERROGATORY NO. 5:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is



substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the goods and services for which Opposer has used the CULTUREPOP mark and the date of first use in commerce for each, once a suitable protective order has been entered. Specifically, Opposer directs Applicant to the Statement of Use filed for its application to register CULTUREPOP, Serial No. 85/096252.

**INTERROGATORY NO. 6:**

Identify all goods and services for which Opposer intends to use the CULTUREPOP mark and state all activities undertaken by Opposer to prepare to commence such use.

**RESPONSE TO INTERROGATORY NO. 6:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive, particularly in that it seeks to impose an unreasonable obligation on Opposer with respect to numerous, separate goods and services. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks

information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the goods and services for which Opposer intends to use the CULTUREPOP mark, once a suitable protective order has been entered.

**INTERROGATORY NO. 7:**

For each of the goods and services identified in response to Interrogatory No. 6, explain in detail whether each such good or service is related to art, music, or other forms of popular culture.

**RESPONSE TO INTERROGATORY NO. 7:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer also objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive, particularly in that it seeks to impose an unreasonable obligation on Opposer with respect to numerous, separate goods and services. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information

and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory because it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to derive or ascertain the nature of the goods and services at issue, once a suitable protective order has been entered.

**INTERROGATORY NO. 8:**

Describe in detail Opposer's promotional, marketing and advertising plans and activities for the goods and services offered under the CULTUREPOP Mark.

**RESPONSE TO INTERROGATORY NO. 8:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague, ambiguous, and unintelligible. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets,

and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to reflect representative samples of promotional, marketing, and advertising plans and activities for the goods and services offered under the CULTUREPOP Mark, to the extent any such documents are found to exist and once a suitable protective order has been entered. Further, Opposer promotes and has promoted its CULTUREPOP mark on-air and through its websites, social media, and word of mouth.

**INTERROGATORY NO. 9:**

Describe the consumers for Opposer's goods and services offered under the CULTUREPOP Mark.

**RESPONSE TO INTERROGATORY NO. 9:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this

Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer. Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the consumers of Opposer's goods and services offered under the CULTUREPOP Mark, once a suitable protective order has been entered. Further, Opposer believes that the demographics for its CULTUREPOP services include adults in an age group ranging from 25 to 54 years of age.

**INTERROGATORY NO. 10:**

Identify all third parties that use or have used the terms "POP CULTURE," "POPULAR CULTURE" or other names or phrases containing "POP" and "CULTURE" on or in connection with television programming, websites or publications.

**RESPONSE TO INTERROGATORY NO. 10:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information equally available to Applicant, and seeks premature expert discovery. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds as follows: Opposer is not aware of any other person or entity using the terms "POP CULTURE," "POPULAR CULTURE" or other names or phrases containing "POP" and "CULTURE" as trademarks on or in connection with television programming, websites, or publications, other than Applicant.

**INTERROGATORY NO. 11:**

State all facts supporting Opposer's allegation in Paragraph 7 of the Notice of Opposition that E!'s use of the POP OF CULTURE Mark is likely to cause confusion,

mistake or deception as to the source or origin of EI's goods and services offered under the POP OF CULTURE Mark.

**RESPONSE TO INTERROGATORY NO. 11:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks premature expert discovery.

Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds as follows: The marks used by the parties are very similar – both use POP and CULTURE. Applicant merely reversed the order of the words in Opposer's mark. The services offered by the parties are similar. Opposer's mark is strong as shown by such things as the marketing of Opposer's program, discussions on social media regarding Opposer's program, and public recognition of the mark. The channels of trade and marketing of the parties are similar or related because of the nature of the content and targeted demographic. Opposer has expanded from downloadable electronic publications in the nature of e-newsletters in the field of arts, culture and entertainment featuring recommendations, reviews, trivia questionnaires,

news, recipes and opinion polls; providing a website featuring information about arts and culture; providing non-downloadable electronic publications in the nature of e-newsletters in the field of arts, culture and entertainment featuring recommendations, reviews, trivia questionnaires, recipes, news and opinion polls; on-line journals, namely, blogs featuring arts and culture; and creating and maintaining blogs for others to television programs under its mark. Opposer believes that Applicant is likely to have intended to trade on Ovation's rights because Opposer's CULTUREPOP services are well-known, and if Applicant had done a trademark search, it would have learned of Opposer's applications to register and use CULTUREPOP.

**INTERROGATORY NO. 12:**

Identify all instances of actual confusion, if any, between Opposer and E! based on E!'s use of the POP OF CULTURE Mark or E POP OF CULTURE Mark.

**RESPONSE TO INTERROGATORY NO. 12:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks premature expert discovery.



Subject to the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds as follows: Opposer is not aware of the existence of any actual confusion as of yet. Discovery is continuing.

**INTERROGATORY NO. 13:**

To the extent your response to any of the Requests for Admissions served contemporaneously herewith is anything other than an unqualified admission, describe in detail the facts upon which you base your response, identifying by number the specific request(s) for admission to which the facts stated relate.

**RESPONSE TO INTERROGATORY NO. 13:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it seeks information to impose burdens upon Opposer not contemplated by the FRCP, the TBMP, or other applicable law. Opposer also objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive, particularly because it imposes an unreasonable burden on Opposer with respect to numerous of the **85** Requests for Admission propounded by Applicant. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks premature expert discovery. Opposer also objects to this

Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Opposer also objects to this Interrogatory on the grounds that, with subparts, it exceeds the total number of written Interrogatories that a party may serve pursuant to FRCP 33 and Section 405.03 of the TBMP.

**INTERROGATORY NO. 14:**

List all domain names and social media user names (including on Facebook, Twitter, Instagram, and YouTube) that you own or use that contain the CULTUREPOP Mark or any element thereof.

**RESPONSE TO INTERROGATORY NO. 14:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the grounds that, with subparts, it exceeds the total number of written

Interrogatories that a party may serve pursuant to FRCP 33 and Section 405.03 of the TBMP.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer.

Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the domain names and social media user names used or owned by Opposer that contain the CULTUREPOP Mark, once a suitable protective order has been entered. Opposer further responds that the domain names and social media names containing the CULTUREPOP mark include the following:

<http://www.ovationtv.com/culturepop/>

<http://www.ovationtv.com/series/culture-pop>

<http://www.ovationtv.com/schedule/>

<http://www.ovationtv.com/advertisers/adsales/> in the videos)

<http://www.ovationtv.com/advertisers/adsales/programming/>

<http://www.youtube.com/watch?v=1c3Rz6-haA>

<http://www.youtube.com/watch?v=RQfbKYtnN7Y>

<http://www.youtube.com/watch?v=Oi5fTeXTuWg>

<http://www.youtube.com/watch?v=QkBe2AtuoZE>

<http://www.youtube.com/watch?v=6di85FnSGwY>

[http://www.youtube.com/watch?v=XtBIHT\\_hw6U](http://www.youtube.com/watch?v=XtBIHT_hw6U)

<http://www.youtube.com/watch?v=HkGotAHoXZ4>  
<http://www.youtube.com/watch?v=Wb7Aldb8UKg>  
[http://www.youtube.com/watch?v=Qi50WQs\\_ILM](http://www.youtube.com/watch?v=Qi50WQs_ILM)  
<http://www.youtube.com/watch?v=feMNEGPr0mg>  
<http://www.youtube.com/watch?v=wJtjpDJZD04>  
<http://www.youtube.com/watch?v=b6REUrnrlHE>  
<http://www.youtube.com/watch?v=i5bldv8PCHQ>  
<http://www.youtube.com/watch?v=K7C5zfJUOxo>  
<http://www.youtube.com/watch?v=tnalJ80sOro>  
<http://www.youtube.com/watch?v=LJvCKCmWL7s>  
[http://www.youtube.com/watch?v=\\_fl5tlg-P5w](http://www.youtube.com/watch?v=_fl5tlg-P5w)  
<http://www.youtube.com/watch?v=fTbVVGgq50c>  
<http://www.youtube.com/watch?v=whUDsJhV4rl>  
<http://www.youtube.com/watch?v=V9mCkwfPFtQ>  
<http://www.youtube.com/watch?v=XnRsgLIViY0>  
<http://www.youtube.com/watch?v=iEtZqUIF8oY>  
<http://www.youtube.com/watch?v=DLvKCA4BLqI>  
[http://www.youtube.com/watch?v=1Gw\\_Lne8CJM](http://www.youtube.com/watch?v=1Gw_Lne8CJM)  
<http://www.youtube.com/watch?v=POjl9hRaFNk>  
<https://twitter.com/culturepoptv>  
[https://www.facebook.com/CulturePopTV/app\\_533557586679429](https://www.facebook.com/CulturePopTV/app_533557586679429)  
Instagram - @culturepoptv  
<http://www.pinterest.com/culturepoptv/>

**INTERROGATORY NO. 15:**

Identify with specificity all media (including, without limitation, social media, websites, television, radio and print) that you use to promote the CULTUREPOP Mark or any goods or services offered under the CULTUREPOP Mark, including, without limitation, names of television channels; names of social media sites, including Facebook, Twitter, Instagram, and YouTube; and the like.

**RESPONSE TO INTERROGATORY NO. 15:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it is vague and ambiguous, and duplicative of other interrogatories herein. Opposer also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Interrogatory to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the grounds that, with subparts, it exceeds the total number of written Interrogatories that a party may serve pursuant to FRCP 33 and Section 405.03 of the TBMP.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Interrogatory, Opposer responds that this Interrogatory calls

for an abstract, summary, or compilation of Opposer's business records, and the burden for preparing the same is substantially the same for Applicant as it is for Opposer.

Therefore, pursuant to Federal Rule of Civil Procedure 33(d), Opposer will produce non-privileged documents in its possession, custody, or control sufficient to derive or ascertain the information sought in this Interrogatory, once a suitable protective order has been entered. Opposer further responds that the television channels, domain names, and social media names containing the CULTUREPOP mark have included the following:

The Ovation television channel

<http://www.ovationtv.com/culturepop/>

<http://www.ovationtv.com/series/culture-pop>

<http://www.ovationtv.com/schedule/>

<http://www.ovationtv.com/advertisers/adsales/> in the videos)

<http://www.ovationtv.com/advertisers/adsales/programming/>

<http://www.youtube.com/watch?v=1c3Rz6-haA>

<http://www.youtube.com/watch?v=RQfbKYtnN7Y>

<http://www.youtube.com/watch?v=Oi5fTeXTuWg>

<http://www.youtube.com/watch?v=QkBe2AtuoZE>

<http://www.youtube.com/watch?v=6di85FnSGwY>

[http://www.youtube.com/watch?v=XtBIHT\\_hw6U](http://www.youtube.com/watch?v=XtBIHT_hw6U)

<http://www.youtube.com/watch?v=HkGotAHoXZ4>

<http://www.youtube.com/watch?v=Wb7Aldb8UKg>

[http://www.youtube.com/watch?v=Qi50WQs\\_ILM](http://www.youtube.com/watch?v=Qi50WQs_ILM)

<http://www.youtube.com/watch?v=feMNEGPr0mg>

<http://www.youtube.com/watch?v=wJtpDJZD04>

<http://www.youtube.com/watch?v=b6REUrnrIHE>

<http://www.youtube.com/watch?v=i5bldv8PCHQ>

<http://www.youtube.com/watch?v=K7C5zfJUOxo>

<http://www.youtube.com/watch?v=tnaIJ80sOro>

<http://www.youtube.com/watch?v=LJvCKCmWL7s>

[http://www.youtube.com/watch?v=\\_fl5tlg-P5w](http://www.youtube.com/watch?v=_fl5tlg-P5w)

<http://www.youtube.com/watch?v=fTbVVGgq50c>

<http://www.youtube.com/watch?v=whUDsJhV4rl>

<http://www.youtube.com/watch?v=V9mCkwfPFtQ>

<http://www.youtube.com/watch?v=XnRsgLIViY0>

<http://www.youtube.com/watch?v=iEtZqUIF8oY>

<http://www.youtube.com/watch?v=DLvKCA4BLqI>

[http://www.youtube.com/watch?v=1Gw\\_Lne8CJM](http://www.youtube.com/watch?v=1Gw_Lne8CJM)

<http://www.youtube.com/watch?v=POjI9hRaFNk>

<https://twitter.com/culturepoptv>

[https://www.facebook.com/CulturePopTV/app\\_533557586679429](https://www.facebook.com/CulturePopTV/app_533557586679429)

Instagram - @culturepoptv

<http://www.pinterest.com/culturepoptv/>

**INTERROGATORY NO. 16:**

Identify each person whom you expect to call as an expert witness at the opposition, and for each such person state:

- a. the subject matter on which the expert is expected to testify;
- b. the substance of the facts and opinions to which the expert is expected to testify; and
- c. a summary of the grounds for each such opinion.

**RESPONSE TO INTERROGATORY NO. 16:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Interrogatory on the grounds that it seeks information to impose burdens upon Opposer not contemplated by the FRCP, the TBMP, or other applicable law. Opposer also objects to the Interrogatory to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or other applicable privilege. Opposer also objects to this Interrogatory on the grounds that it seeks premature discovery of expert testimony. Opposer also objects to this Interrogatory on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this Interrogatory on the grounds that, with subparts, it exceeds the total number of written Interrogatories that a party may serve pursuant to FRCP 33 and Section 405.03 of the TBMP.

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Subject to the foregoing objections, and to the extent Opposer understand the Interrogatory, Opposer responds as follows: To the extent necessary, Opposer will disclose any experts it intends to call at trial in accordance with FRCP 26(a)(2) and the TBMP.

SHEPPARD, MULLIN, RICHTER &  
HAMPTON, LLP

Dated: January 23, 2014

By: 

Jill W. Pietrini  
Whitney Walters

*Attorneys for Opposer*  
Ovation LLC

**VERIFICATION**

I, Rob Canter, declare and state as follows:

I have read the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER** and know its contents. The factual matters stated in the foregoing document are true based on information in the possession of Opposer, except as to any matters that are stated on information and belief, and as to those matters, Opposer believes them to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Name: Rob Canter

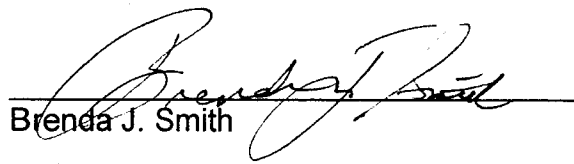
Title: Senior Vice President, Head of Production/Media Services

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER** is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Michael J. McCue  
LEWIS AND ROCA LLP  
3993 Howard Hughes Parkway, Ste. 600  
Las Vegas, Nevada 89169

on this 23rd day of January, 2014.

  
Brenda J. Smith

SMRH:415540167.4

# EXHIBIT C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>In re Matter of Application No. 85/569,798 for the mark: POP OF CULTURE</p> <p>Ovation LLC,</p> <p>Opposer,</p> <p>vs.</p> <p>E! Entertainment Television, LLC,</p> <p>Applicant.</p>	<p>Opposition No. 91-210506</p> <p><b>OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF DOCUMENT REQUESTS TO OPPOSER</b></p>
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**I. PRELIMINARY STATEMENT**

Pursuant to Federal Rule of Civil Procedure 34 and Section 406 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Opposer Ovation LLC ("Opposer") hereby objects and responds to Applicant E! Entertainment Television, LLC's ("Applicant") First Set of Document Requests to Opposer (the "Requests") as follows:

These responses are made solely for the purposes of this action. Any document supplied in response to any particular Request is or will be supplied by Opposer subject to all objections as to competence, relevance, materiality, propriety, admissibility, and any and all other objections on any grounds that would require the exclusion of the document or portion thereof if such document were offered into evidence, all of which objections and grounds are hereby expressly reserved and may be interposed at the time of trial.

No incidental or implied admissions are intended by the responses herein. The fact that Opposer has supplied or agreed to supply, or hereafter supplies or agrees to supply, a document in response to any particular Request should not be taken as an admission that Opposer accepts or admits the existence of any fact set forth or assumed by such Request or said document or that such document constitutes admissible evidence. The fact that Opposer has supplied or agreed to supply, or hereafter supplies or agrees to supply, a document in response to any Request is not intended, and shall not be construed as, a waiver by Opposer of any part of any objection to any such Request or any part of any general or other objection. The fact that Opposer makes a response and/or objection to any Request is not intended, and shall not be construed as an admission that documents responsive to that Request exist or are in Opposer's possession, custody, or control.

Opposer reserves the right to make changes to these responses if it appears that omissions or errors have been made herein, or that future or more accurate information is available. Opposer has not completed its own investigation or discovery. Therefore, the following responses state Opposer's knowledge, information, and belief as of the date of such responses, and Opposer expressly reserves the right to rely upon and/or introduce into evidence at trial such additional documents as Opposer may discover.

## **II. GENERAL OBJECTIONS**

The following General Objections apply to each and every Request and shall have the same force and effect as if fully set forth in the response to each.

1. Opposer objects to each Request insofar as it is unintelligible, vague, overly broad, oppressive, harassing or vexatious; imposes burden or expense that

outweighs its likely benefit; seeks information equally available to Opposer and Applicant; seeks information not relevant to the claim or defense of any party nor likely to lead to the discovery of admissible evidence; seeks Opposer's or its licensees' confidential information; seeks information not within Opposer's possession, custody, or control; does not describe with reasonable particularity the information and/or documents requested; contains erroneous and/or contentious factual allegations or legal assertions; and/or seeks information related to facts, events or activities, or documents dated, prepared or received after the commencement of this action.

2. Opposer objects to these Requests to the extent they seek to impose upon Opposer burdens and obligations not contemplated by the FRCP, the TBMP, or other applicable law.

3. Opposer objects to each Request to the extent that it: (i) seeks disclosure of information and documents that would violate the privacy rights of individuals; or (ii) seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents, including financial information and documents, of Opposer or third parties. To the extent that Opposer responds to the Requests by stating that it will provide information that it, any party to this litigation, or any third party deems to embody material that is private, business confidential, proprietary, trade secret or otherwise protected from disclosure pursuant to FRCP 26 or otherwise, Opposer will do so only pursuant to a protective order entered in this action.

4. Opposer's responses are made to the best of its current knowledge, information, and belief, and are made according to documents or information currently

in its possession, custody, or control. Opposer does not represent that any information or documents actually exist, but that it will, as appropriate, make a good faith search and attempt to ascertain whether information or documents responsive to these Requests do, in fact, exist.

5. Opposer is responding to the Requests as it interprets and understands them. If Applicant subsequently asserts an interpretation of the Requests that differs from Opposer's understanding, Opposer reserves the right to supplement its objections and/or responses herein.

6. Opposer objects to the Requests to the extent they call for the production of information or documents that are already in the public domain, already in Applicant's possession, custody, or control, or otherwise available to Applicant through more closely involved third parties, and therefore are substantially less burden for Applicant to obtain than for Opposer to obtain.

7. Opposer objects to the Requests to the extent that they seek the identification of "all" and/or "all" documents or communications pertaining to a specific subject, on the ground that such language is overly broad and unduly burdensome. To the extent that a search is required, Opposer will search those files in its possession, custody, or control where there is a reasonable likelihood that responsive documents may be located.

8. Opposer makes the objections and responses set forth below without in any manner waiving: (i) the right to object to the use of any response for any purpose in this action or any other actions on grounds of privilege, relevancy, materiality, or any other appropriate basis; (ii) the right to object to any other Requests involving, or



relating to, the subject matter of the responses herein; (iii) the right to revise, correct, supplement, or clarify any of the responses provided below at any time; (iv) the right to assert the attorney-client privilege, work product protections, or any other applicable privilege; and (v) the right to assert any additional or supplemental objections should additional grounds for such objections become apparent. Opposer expressly reserves the right to supplement its responses.

### **III. OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

The following Objections to Definitions and Instructions apply to each and every Request and shall have the same force and effect as if fully set forth in the response to each.

1. Opposer objects to Applicant's Definitions and Instructions to the extent they seek to use broader definitions or rules of construction than those set forth in FRCP 26 or to impose upon Opposer burdens and obligations not contemplated by the FRCP, the TBMP, or other applicable law.

2. Opposer objects to Applicant's definitions of "You" or "your"—which are defined to include "Opposer Ovation, LLC, its subsidiaries, parents, affiliates, licensees, and their respective officers, directors, employees, agents, and predecessors-in-interest"—to the extent that these definitions seek to impose on Opposer the obligation to produce documents and things not under its possession, custody, or control, or to obtain information or documents from other non-parties to the instant proceeding. Opposer will not undertake to gather or provide any such information. Opposer further objects to these definitions on the grounds that the terms as defined are vague,

ambiguous, and unintelligible. For the purpose of its responses, Opposer will construe these terms to refer to Ovation, LLC only, as defined herein.

3. Opposer objects to Applicant's definition of "CULTUREPOP Mark" as overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, vague, ambiguous, and unintelligible to the extent it encompasses "any trademark or service mark owned or used by Ovation containing the words 'CULTURE' and 'POP,' with or without a space between them, and alone or in connection with other letters, numbers, words or designs."

4. Opposer objects to the definitions of "documents" and "materials" and the instructions related thereto to the extent they seek to use broader definitions or rules of construction than those set forth in FRCP 26 or to impose upon Opposer burdens and obligations not contemplated by the FRCP, the TBMP, or other applicable law.

Without waiving any of the objections asserted herein and reserving the rights stated above, Opposer supplies the responses appearing below:

#### **IV. SPECIFIC OBJECTIONS AND RESPONSES**

##### **REQUEST FOR PRODUCTION NO. 1:**

All documents referring or relating to Opposer's selection and adoption of the CULTUREPOP Mark.

##### **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also

objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request to the extent any such documents are found to exist.

**REQUEST FOR PRODUCTION NO. 2:**

All documents referring or relating to Opposer's trademark search or clearance of the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the

extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce its search report for CULTUREPOP.

**REQUEST FOR PRODUCTION NO. 3:**

All documents referring or relating to alternative trademarks considered for adoption by Opposer for the services for which the CULTUREPOP Mark was adopted.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request to the extent any such documents are found to exist.

**REQUEST FOR PRODUCTION NO. 4:**

All documents referring or relating to Opposer's decision to apply for registration of the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR PRODUCTION NO. 5:**

All documents referring or relating to the meaning or intended meaning of the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of non-privileged documents in its possession, custody, or control sufficient to identify the meaning or intended meaning of the CULTUREPOP Mark to the extent any such documents are found to exist.

**REQUEST FOR PRODUCTION NO. 6:**

All documents referring or relating to third party uses of "POP" and "CULTURE" in connection with television programming.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on

the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Opposer will produce its search report for CULTUREPOP. No other responsive documents are known to exist.

**REQUEST FOR PRODUCTION NO. 7:**

All documents referring or relating to third party uses of "POP" and "CULTURE" in connection with websites.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the

extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Opposer will produce its search report for CULTUREPOP. No other responsive documents are known to exist.

**REQUEST FOR PRODUCTION NO. 8:**

All documents referring or relating to third party uses of “POP” and “CULTURE” in connection with publications.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.



Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Opposer will produce its search report for CULTUREPOP. No other responsive documents are known to exist.

**REQUEST FOR PRODUCTION NO. 9:**

All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with television programming, including, without limitation, videos of all television programming.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of

non-privileged documents in its possession, custody, or control responsive to this Request.

**REQUEST FOR PRODUCTION NO. 10:**

All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with websites, including, without limitation, printouts of all pages of all websites on which Opposer has used the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request to the extent that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of non-privileged documents in its possession, custody, or control responsive to this Request.

**REQUEST FOR PRODUCTION NO. 11:**

All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with publications, including, without limitation, printouts of all such publications.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of non-privileged documents in its possession, custody, or control responsive to this Request.

**REQUEST FOR PRODUCTION NO. 12:**

All documents reflecting Opposer's use of the CULTUREPOP Mark in connection with social, including, without limitation, printouts of screen shots of such use.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague, ambiguous, and unintelligible. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request to mean social media, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of non-privileged documents in its possession, custody, or control responsive to this Request.

**REQUEST FOR PRODUCTION NO. 13:**

All documents reflecting Opposer's use of the phrase "pop culture" or "popular culture" in connection with any of goods and services offered under the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR PRODUCTION NO. 14:**

All documents reflecting the content of Opposer's television programming offered under the CULTUREPOP mark, including, without limitation, scripts and transcriptions.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the

extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR PRODUCTION NO. 15:**

All documents reflecting Opposer's promotion, advertising or marketing of goods or services under the CULTUREPOP Mark, including, without limitation, marketing plans, media buys, ad copy, and the like.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague, ambiguous, and unintelligible. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of

non-privileged documents in its possession, custody, or control responsive to this Request to the extent any such documents are found to exist.

**REQUEST FOR PRODUCTION NO. 16:**

All documents reflecting the sales of all goods and services under or in connection with the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce representative samples of non-privileged documents in its possession, custody, or control responsive to this Request.

**REQUEST FOR PRODUCTION NO. 17:**

All documents reflecting the actual and intended demographics of consumers of Opposer's goods and services offered under the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the actual and intended demographics of consumers of Opposer's goods and services offered under the CULTUREPOP Mark to the extent any such documents are found to exist.



**REQUEST FOR PRODUCTION NO. 18:**

All documents reflecting the channels through which Opposer distributes goods and services under the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify the channels through which Opposer distributes goods and services under the CULTUREPOP Mark to the extent any such documents are found to exist.

**REQUEST FOR PRODUCTION NO. 19:**

All documents reflecting, referring or relating to Opposer's intended future uses of the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control sufficient to identify Opposer's intended future uses of the CULTUREPOP Mark to the extent any such documents are found to exist.

**REQUEST FOR PRODUCTION NO. 20:**

All documents relating to any license or assignment of the CULTURE POP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control sufficient to reflect the licensing or assignment of the CULTUREPOP Mark to the extent any such documents are found to exist.

**REQUEST FOR PRODUCTION NO. 21:**

All documents relating to Opposer's knowledge of E!'s adoption and use of the CULTURE OF POP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on

the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request to the extent any such documents are found to exist.

**REQUEST FOR PRODUCTION NO. 22:**

All documents relating to any damage or injury suffered by Opposer based on E!'s adoption and use of the CULTURE OF POP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or

commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks premature expert discovery, and seeks a legal conclusion.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request.

**REQUEST FOR PRODUCTION NO. 23:**

All documents reflecting any association between pop culture and Opposer's CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague, ambiguous, and unintelligible. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it

seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR PRODUCTION NO. 24:**

All documents reflecting any association between popular culture and Opposer's CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague, ambiguous, and unintelligible. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR PRODUCTION NO. 25:**

All documents relating to Opposer's allegation in Paragraph 7 of the Notice of Opposition that E!'s use of the POP OF CULTURE Mark is likely to cause confusion, mistake or deception as to the source or origin of E!'s goods and services offered under the POP OF CULTURE Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks premature expert discovery.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request.

**REQUEST FOR PRODUCTION NO. 26:**

All documents relating to any instances of actual confusion between Opposer and E! based on E!'s use of the POP OF CULTURE Mark or E POP OF CULTURE Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

Opposer incorporates its Preliminary Statement, General Objections, and Objections to Definitions and Instructions herein. Opposer objects to this Request on the grounds that it is vague and ambiguous. Opposer also objects to this Request on

the grounds that it is overbroad, unduly burdensome, and oppressive. Opposer also objects to this Request to the extent it seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents of Opposer or its licensees. Opposer also objects to this Request to the extent it seeks information protected by the attorney-client privilege and the work product doctrine. Opposer also objects to this Request on the grounds that it seeks premature expert discovery.

Subject to and without waiving any of the foregoing objections, and to the extent Opposer understands the Request, Opposer respond as follows: Once the parties have entered into a suitable protective order, Opposer will produce non-privileged documents in its possession, custody, or control responsive to this Request to the extent any such documents are found to exist.

SHEPPARD, MULLIN, RICHTER &  
HAMPTON, LLP

Dated: January 23, 2014

By: 

Jill M. Pietrini  
Whitney Walters

*Attorneys for Opposer*  
Ovation LLC

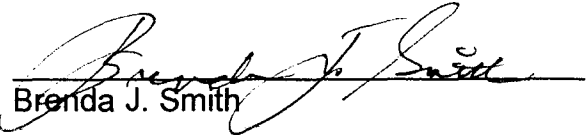


**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF DOCUMENT REQUESTS TO OPPOSER** is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Michael J. McCue  
LEWIS AND ROCA LLP  
3993 Howard Hughes Parkway, Ste. 600  
Las Vegas, Nevada 89169

on this 23rd day of January, 2014.

  
Brenda J. Smith

SMRH:415540157.1

# EXHIBIT D

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

<p>In re Matter of Application No. 85/569,798 for the mark: POP OF CULTURE</p> <p>Ovation LLC,</p> <p>Opposer,</p> <p>vs.</p> <p>E! Entertainment Television, LLC,</p> <p>Applicant.</p>	<p>Opposition No. 91-210506</p> <p><b>OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSION</b></p>
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**I. PRELIMINARY STATEMENT**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure ("FRCP"), and Section 407 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Opposer Ovation LLC ("Opposer") hereby objects and responds to Applicant E! Entertainment Television, LLC's ("Applicant") First Set of Requests For Admission ("RFAs").

Opposer reserves the right to make any changes to these responses if it appears that omissions or errors have been made therein, or that future or more accurate information is available. Opposer has not completed its own investigation and discovery. Therefore, the following responses state Opposer's knowledge, information, and belief as of the date of such responses, and Opposer expressly reserves the right to rely upon and/or introduce into evidence at trial such additional information and/or

documents as Opposer may discover and/or amend, or withdraw these responses prior to trial.

## **II. GENERAL OBJECTIONS**

Opposer incorporates herein by reference the General Objections and Objections to Definitions and Instructions set forth in Opposer's responses to Applicant's First Set of Interrogatories and First Set of Document Requests to Opposer. Such General Objections and Objections to Definitions and Instructions shall have the same force and effect as if fully set forth in the response to each of the below RFA responses.

### **RESPONSE TO REQUESTS FOR ADMISSION**

#### **REQUEST FOR ADMISSION NO. 1:**

Admit that "pop" is short for "popular."

#### **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

#### **REQUEST FOR ADMISSION NO. 2:**

Admit that "pop" is commonly known as an abbreviation for "popular."

#### **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous,

particularly as to the phrase “commonly known,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 3:**

Admit that “pop culture” is a well-known phrase in the United States.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “well-known,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny

this RFA.

**REQUEST FOR ADMISSION NO. 4:**

Admit that “pop culture” is short for “popular culture.”

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 5:**

Admit that “pop” in the CULTUREPOP Mark refers to “popular.”

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particular as to the phrase “refers to.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA on the grounds to the extent that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the

RFA, Opposer responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 6:**

Admit that "CULTUREPOP" is comprised of the words "culture" and "pop".

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase "comprised of." Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Admit.

**REQUEST FOR ADMISSION NO. 7:**

Admit that the CULTUREPOP Mark contains the words "culture" and "pop."

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Admit.

**REQUEST FOR ADMISSION NO. 8:**

Admit that "CULTUREPOP" is "pop culture" with the terms transposed.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

Opposer objects to this RFA on the grounds that it is vague, ambiguous, and

unintelligible. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 9:**

Admit that you use the CULTUREPOP Mark in connection with Media in the field of popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “in the field of” and “popular culture.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined.

**REQUEST FOR ADMISSION NO. 10:**

Admit that you use the CULTUREPOP Mark in connection with Media in the field of pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “in the field of” and “pop culture.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined.

**REQUEST FOR ADMISSION NO. 11:**

Admit that you use the CULTUREPOP Mark in connection with Media in the field of entertainment, among other topics.



**RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “in the field of.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

**REQUEST FOR ADMISSION NO. 12:**

Admit that you use the CULTUREPOP Mark in connection with Media in the field of theater, among other topics.

**RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “in the field of.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

**REQUEST FOR ADMISSION NO. 13:**

Admit that you use the CULTUREPOP Mark in connection with Media in the field of art, among other topics.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “in the field of.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

**REQUEST FOR ADMISSION NO. 14:**

Admit that you use the CULTUREPOP Mark in connection with Media in the field

of visual arts, among other topics.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “in the field of” and “visual arts.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

**REQUEST FOR ADMISSION NO. 15:**

Admit that you use the CULTUREPOP Mark in connection with Media about new music, among other topics.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “new music.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

**REQUEST FOR ADMISSION NO. 16:**

Admit that you use the CULTUREPOP Mark in connection with Media about emerging artists, among other topics.

**RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “emerging artists.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

**REQUEST FOR ADMISSION NO. 17:**

Admit that you use the CULTUREPOP Mark in connection with Media about influential artists, among other topics.

**RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “influential artists.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

**REQUEST FOR ADMISSION NO. 18:**

Admit that you use the CULTUREPOP Mark in connection with Media about innovators, among other topics.

**RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “innovators.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined and to the extent it refers to “other topics.”

**REQUEST FOR ADMISSION NO. 19:**

Admit that entertainment is considered part of popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of

Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 20:**

Admit that theater is considered part of popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 21:**

Admit that art is considered part of popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 22:**

Admit that the visual arts is considered part of popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “visual arts,” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the

RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 23:**

Admit that new music is considered part of popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases "considered part of," "new music," and "popular culture." Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 24:**

Admit that emerging artists are considered part of popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases "considered part of," "emerging artists" and "popular culture." Opposer also objects to this RFA on the grounds that it is overbroad. Opposer

also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 25:**

Admit that influential artists are considered part of popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “influential artists” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 26:**

Admit that innovators are considered part of popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “innovators” and the phrases “considered part of” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 27:**

Admit that entertainment is considered part of pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of



admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 28:**

Admit that theater is considered part of pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 29:**

Admit that art is considered part of pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous,

particularly as to the phrases “considered part of” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 30:**

Admit that the visuals arts is considered part of pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “visuals arts,” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny

this RFA.

**REQUEST FOR ADMISSION NO. 31:**

Admit that new music is considered part of pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 31:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “new music,” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 32:**

Admit that emerging artists are considered part of pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 32:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “emerging artists,” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks

information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA

**REQUEST FOR ADMISSION NO. 33:**

Admit that influential artists are considered part of pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 33:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “considered part of,” “influential artists,” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA

**REQUEST FOR ADMISSION NO. 34:**

Admit that innovators are considered part of pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 34:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “innovators” and the phrases “considered part of” and “pop culture.” Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA

**REQUEST FOR ADMISSION NO. 35:**

Admit that you selected the CULTUREPOP Mark because it conveys the message that the services offered under the mark relate to popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 35:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases “conveys the message” and “popular culture.” Opposer also objects to this RFA on the grounds that it is overbroad.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 36:**

Admit that the CULTUREPOP Mark because it conveys the message that the

services offered under the mark relate to pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 36:**

Opposer objects to this RFA on the grounds that it is vague, ambiguous, and unintelligible, and thus, denies the RFA on that basis.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 37:**

Admit that the CULTUREPOP Mark describes Media relating to popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 37:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture” and what is meant by the term “describes” in this context. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 38:**

Admit that the CULTUREPOP Mark describes Media relating to pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 38:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “pop culture” and what is meant by the term “describes” in this context. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the

discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 39:**

Admit that third parties use the term “pop culture” to refer to Media regarding entertainment.

**RESPONSE TO REQUEST FOR ADMISSION NO. 39:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 40:**

Admit that third parties use the term “pop culture” to refer to Media regarding theater.

**RESPONSE TO REQUEST FOR ADMISSION NO. 40:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 41:**

Admit that third parties use the term “pop culture” to refer to Media regarding the arts.

**RESPONSE TO REQUEST FOR ADMISSION NO. 41:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 42:**

Admit that third parties use the term “pop culture” to refer to Media regarding the visual arts.

**RESPONSE TO REQUEST FOR ADMISSION NO. 42:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “visual arts.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.



**REQUEST FOR ADMISSION NO. 43:**

Admit that third parties use the term “pop culture” to refer to Media regarding new music.

**RESPONSE TO REQUEST FOR ADMISSION NO. 43:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “new music.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 44:**

Admit that third parties use the term “pop culture” to refer to Media regarding emerging artists.

**RESPONSE TO REQUEST FOR ADMISSION NO. 44:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “emerging artists.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 45:**

Admit that third parties use the term “pop culture” to refer to Media regarding influential artists.

**RESPONSE TO REQUEST FOR ADMISSION NO. 45:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “influential artists.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 46:**

Admit that third parties use the term “pop culture” to refer to Media regarding innovators.

**RESPONSE TO REQUEST FOR ADMISSION NO. 46:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “innovators.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 47:**

Admit that you describe Media offered under the CULTUREPOP Mark as relating to popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 47:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 48:**

Admit that you describe television programming offered under the CULTUREPOP Mark as relating to popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 48:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture.” Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer admits that CulturePOP, the content service powered by Opposer, is described as offering a daily culture content service.

**REQUEST FOR ADMISSION NO. 49:**

Admit that the term “popular culture” is descriptive when used in connection with Media about popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 49:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

**REQUEST FOR ADMISSION NO. 50:**

Admit that the term “pop culture” is descriptive when used in connection with Media about popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 50:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “popular culture.” Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

**REQUEST FOR ADMISSION NO. 51:**

Admit that you do not own trademark rights in “popular culture”.

**RESPONSE TO REQUEST FOR ADMISSION NO. 51:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer admits that it has not filed an application for federal registration of the trademark POPULAR CULTURE.

**REQUEST FOR ADMISSION NO. 52:**

Admit that you do not own trademark rights in "pop culture".

**RESPONSE TO REQUEST FOR ADMISSION NO. 52:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer admits that it has not filed an application for federal registration of the trademark POP CULTURE.

**REQUEST FOR ADMISSION NO. 53:**

Admit that you do not own trademark rights in "popular culture" for Media.

**RESPONSE TO REQUEST FOR ADMISSION NO. 53:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

**REQUEST FOR ADMISSION NO. 54:**

Admit that you do not own trademark rights in "pop culture" for Media.

**RESPONSE TO REQUEST FOR ADMISSION NO. 54:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

**REQUEST FOR ADMISSION NO. 55:**

Admit that you do not own trademark rights in "popular culture" for Media relating to popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 55:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not

relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

**REQUEST FOR ADMISSION NO. 56:**

Admit that you do not own trademark rights in “pop culture” for Media relating to pop culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 56:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is compound, as Media is defined. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

**REQUEST FOR ADMISSION NO. 57:**

Admit that the CULTUREPOP Mark is not the same as “pop culture.”

**RESPONSE TO REQUEST FOR ADMISSION NO. 57:**

Opposer objects to this RFA on the grounds that it is vague, ambiguous, and unintelligible, seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence, and to the extent it seeks a legal conclusion, and thus, denies the RFA on that basis.

**REQUEST FOR ADMISSION NO. 58:**

Admit that the CULTUREPOP Mark is commercially weak.

**RESPONSE TO REQUEST FOR ADMISSION NO. 58:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 59:**

Admit that the CULTUREPOP Mark is conceptually weak.

**RESPONSE TO REQUEST FOR ADMISSION NO. 59:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 60:**

Admit that the CULTUREPOP Mark is not protectable absent a showing of secondary meaning.

**RESPONSE TO REQUEST FOR ADMISSION NO. 60:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible



evidence. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 61:**

Admit that the CULTUREPOP Mark has not acquired secondary meaning.

**RESPONSE TO REQUEST FOR ADMISSION NO. 61:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 62:**

Admit that the CULTUREPOP Mark is entitled to only a narrow scope of protection.

**RESPONSE TO REQUEST FOR ADMISSION NO. 62:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase "narrow scope." Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the

RFA, Opposer responds as follows: Denied.

**REQUEST FOR ADMISSION NO. 63:**

Admit that, prior to August 2010, third parties used "pop culture" to describe popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 63:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase "popular culture." Opposer also objects to this RFA on the grounds that it is overbroad, and seeks a legal conclusion. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 64:**

Admit that, prior to August 2010, third parties used "pop culture" to describe Media about popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 64:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase "popular culture." Opposer also objects to this RFA on the grounds that it is compound, as to Media. Opposer also objects to this RFA on the

grounds that it is overbroad, and seeks a legal conclusion. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 65:**

Admit that there is a crowded field of uses of "pop culture" in connection with Media about popular culture.

**RESPONSE TO REQUEST FOR ADMISSION NO. 65:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrases "crowded field of uses" and "popular culture." Opposer also objects to this RFA on the grounds that it is compound, as to Media. Opposer also objects to this RFA on the grounds that it is overbroad, and seeks a legal conclusion. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 66:**

Admit that you were not the first to use a mark comprised of the terms "pop" and "culture" in connection with Media in the United States.

**RESPONSE TO REQUEST FOR ADMISSION NO. 66:**

Opposer objects to this RFA on the grounds that it is vague, ambiguous, and unintelligible, particularly as to the phrase "comprised of." Opposer also objects to

this RFA on the grounds that it is compound, as to Media. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 67:**

Admit that <CulturePop.me> predated your use of the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 67:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 68:**

Admit that the Culture Pop show by John Badesow predated your use of the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 68:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 69:**

Admit that the Culture Pop Mirabelle show on YouTube predated your use of the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 69:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the

information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 70:**

Admit that Culture Pop Films predated your use of the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 70:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 71:**

Admit that Seth Cushner's Culture Pop 01 predated your use of the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 71:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks

information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 72:**

Admit that the Culture Pop Studio on Etsy predated your use of the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 72:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 73:**

Admit that the Culture Pop radio on Facebook predated your use of the CULTUREPOP Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 73:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 74:**

Admit that you have not used the CULTUREPOP Mark in connection with all of the goods and services identified Serial No. 85096252.

**RESPONSE TO REQUEST FOR ADMISSION NO. 74:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad and compound. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

**REQUEST FOR ADMISSION NO. 75:**

Admit that you are not aware of any instances of actual confusion among consumers arising from E!'s use of the POP OF CULTURE Mark.



**RESPONSE TO REQUEST FOR ADMISSION NO. 75:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects on the grounds that it seeks a legal conclusion and premature expert discovery.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer is not aware of the existence of any actual confusion as of yet. Discovery is continuing.

**REQUEST FOR ADMISSION NO. 76:**

Admit that you are not aware of any instances of actual confusion among consumers arising from E!'s use of the E POP OF CULTURE Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 76:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects on the grounds that it seeks a legal conclusion and premature expert discovery.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer is not aware of the existence of any actual confusion as of yet. Discovery is continuing.

**REQUEST FOR ADMISSION NO. 77:**

Admit that the E! Mark is well-known.

**RESPONSE TO REQUEST FOR ADMISSION NO. 77:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the phrase “well-known,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence. Opposer also objects to this RFA to the extent it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 78:**

Admit that the E! Mark is famous.

**RESPONSE TO REQUEST FOR ADMISSION NO. 78:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad, and would require expert testimony and/or research. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or

defenses of any party, nor likely to lead to the discovery of admissible evidence.

Opposer also objects to this RFA to the extent that it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 79:**

Admit that Applicant has used the E! mark for more than 20 years.

**RESPONSE TO REQUEST FOR ADMISSION NO. 79:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 80:**

Admit that Applicant uses the E! Mark in connection with a television network.

**RESPONSE TO REQUEST FOR ADMISSION NO. 80:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous.

Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 81:**

Admit that the E! Mark is used in connection with a television network available to millions of U.S. consumers.

**RESPONSE TO REQUEST FOR ADMISSION NO. 81:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “millions,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny

this RFA.

**REQUEST FOR ADMISSION NO. 82:**

Admit that the E! Mark is used in connection with a television network available to tens of millions of U.S. consumers.

**RESPONSE TO REQUEST FOR ADMISSION NO. 82:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “tens of millions,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 83:**

Admit that the E! Mark identifies Applicant as the source or origin of programming offered under the E! Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 83:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous, particularly as to the term “tens of millions,” and would require expert testimony and/or research. Opposer also objects to this RFA on the grounds that it is overbroad, and

calls for a legal conclusion. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 84:**

Admit that the Applicant uses the E! Mark in connection with the POP OF CULTURE Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 84:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA because it seeks information not in the possession, custody, or control of Opposer. Opposer also objects to this RFA on the grounds that it seeks information not relevant to the claims or defenses of any party, nor likely to lead to the discovery of admissible evidence.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Opposer has made a reasonable inquiry, and the information it knows or can readily obtain is insufficient to enable it to admit or deny this RFA.

**REQUEST FOR ADMISSION NO. 85:**

Admit that the E POP OF CULTURE Mark and the CULTUREPOP Mark are not confusingly similar.

**RESPONSE TO REQUEST FOR ADMISSION NO. 85:**

Opposer objects to this RFA on the grounds that it is vague and ambiguous. Opposer also objects to this RFA on the grounds that it is overbroad. Opposer also objects to this RFA on the grounds that it seeks a legal conclusion.

Subject to the foregoing objections, and to the extent Opposer understands the RFA, Opposer responds as follows: Denied.

SHEPPARD, MULLIN, RICHTER &  
HAMPTON, LLP

Dated: January 23, 2014

By:   
Jill M. Pietrini  
Whitney Walters

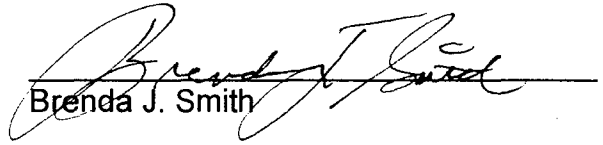
*Attorneys for Opposer*  
Ovation LLC

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSION** is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Michael J. McCue  
LEWIS AND ROCA LLP  
3993 Howard Hughes Parkway, Ste. 600  
Las Vegas, Nevada 89169

on this 23rd day of January, 2014.

  
Brenda J. Smith

SMRH:415540172.3



# EXHIBIT E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<p>In re Matter of Application No. 85/569,798 for the mark: POP OF CULTURE</p> <p>Ovation LLC,</p> <p>Opposer,</p> <p>vs.</p> <p>E! Entertainment Television, LLC,</p> <p>Applicant.</p>	<p>Opposition No. 91-210506</p> <p><b>OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT E! ENTERTAINMENT TELEVISION, LLC</b></p>
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Pursuant to Fed.R.Civ.P. 33 and 37 C.F.R. § 2.120(d)(1), Opposer Ovation LLC (“Opposer”) hereby requests that Applicant E! Entertainment Television, LLC (“Applicant”) answer, separately and fully in writing, under oath and within 30 days from service hereof, the Interrogatories set forth below. Pursuant to Fed.R.Civ.P. 26(e), the responses to these Interrogatories are to be supplemented promptly upon acquisition of further additional information.

I. INSTRUCTIONS

If any one or more of these Interrogatories is or are objected to on the grounds of privilege, overbreadth, vagueness or similar ground, Applicant is instructed for each such Interrogatory to answer the Interrogatory within the 30-day period as narrowed to conform with the objection. Where Applicant lacks knowledge of exact information responsive to an Interrogatory, Applicant is instructed to say so and to answer the Interrogatory to the best of its present knowledge, to supply the best available estimate

of the requested information, and to explain the basis of the estimate.

Unless otherwise stated, the relevant time period for the requests below is January 1, 2010 to the present.

These Interrogatories are continuing and Applicant is hereby requested to supplement its responses immediately whenever it acquires additional information pertinent thereto.

## II. DEFINITIONS

The following definitions are applicable to terms employed in these Interrogatories, in the Instructions accompanying these Interrogatories, and in these Definitions.

A. “Opposer” shall mean and refer to Ovation LLC and includes any and all of its predecessors and successors in interest, employees, licensees, agents and representatives of the foregoing, and any other person acting or purporting to act on behalf of any of the foregoing.

B. “Applicant” shall mean and refer to E! Entertainment Television, LLC, and includes any and all of its predecessors and successors in interest, any and all of its subsidiaries, affiliates and affiliated entities, and its partners, employees, agents, officers, directors, licensees, and representatives of the foregoing, and any other person acting or purporting to act on behalf of any of the foregoing.

C. The “Applications” shall mean the trademark application for the mark POP OF CULTURE, Application No. 85/569,798, which is the subject of this Opposition proceeding, and the trademark applications for the mark E POP OF CULTURE, Application Nos. 85/937,423 and 85/937,399.

D. The “CULTUREPOP Mark” shall mean Opposer’s federal application to register such mark, and the mark CULTUREPOP, as used by Opposer.

E. The “POP OF CULTURE Marks” refers to the mark that are the subject of the Applications.

F. The term “POP OF CULTURE Goods and Services” refers to the services offered or the goods bearing, sold under, or intended to be sold or offered under the POP OF CULTURE Marks.

G. The term “person” refers to natural persons, organizations, associations, partnerships, joint ventures, corporations and other legal entities (including Applicant), and the actions taken by a person include the actions of directors, officers, owners, members, partners, joint venturers, employees or agents acting on the person’s behalf.

H. The singular includes the plural and vice versa; the words “and” and “or” shall be construed in both the conjunctive and disjunctive; the word “all” means “any and all;” the word “any” means “any and all.”

I. The terms “relates” and “refers” mean directly or indirectly mentioning, discussing, describing, pertaining to or connected with, a stated subject matter.

J. The term “document” is used in its customary broad sense and encompasses, without limitation, all handwritten, typed, printed or otherwise visually or aurally reproduced materials, whether copies, drafts or originals, emails, electronically stored, created or transmitted documents, and regardless of whether they are privileged against discovery on any ground, or within the possession, custody or control of Applicant, or its directors, officers, employees, agents, attorneys, consultants or representatives, including but not limited to: letters, correspondence, cables, wires, telegrams, notes, memoranda, diaries, notes or records of telephone conversations, notes or records of personal conversations or interviews, interoffice and intraoffice communications of all types, drawings, plans, sketches, charts, notebooks, data, operating and maintenance manuals, operating and product specifications, photographs, movies and recordings, books, catalogs, labels, packaging, containers, tags, advertisements, promotional materials, storyboards, press releases, reports, studies, questionnaires, assignments, agreements and other official papers and legal instruments, annual reports, management reports, project reports, reports to

shareholders and minutes and reports of meetings (including meetings of directors, officers, executive boards and committees), lists of persons attending meetings, bills, invoices, orders, books, records, files, published material of any kind, and microfilms of documents that may have been destroyed. Any original or copy of a document containing or having attached to it any alterations, notes, comments or other material not included in the first document shall be deemed a separate document.

K. As used herein, the term “identify” means:

1. as to documents, give their dates, a detailed description of the document, the author thereof, the signee thereof, and specify the person having custody or control thereof;
2. as to natural persons, give their full name, business address (or, if not available, home address) and telephone number, employer, job title and, if employed by Applicant, their dates and regular places of employment and general duties;
3. as to corporations, give the full name and present or last known address of the principal place of business of the corporation, identify the officers and directors of the corporation, and the state of incorporation of the corporation;
4. as to partnerships, state whether the partnership is a general or limited partnership, identify the limited and general partners of the partnership, and state the principal place of business of the partnership; and
5. as to joint ventures or other associations, identify all joint venturers or members of the association and state the principal place of business of the joint venture or association.

### III. INTERROGATORIES

#### INTERROGATORY NO. 1:

Identify and describe in detail, separately by use and intent to use, all products and services of Applicant bearing, sold, provided or offered under or intended to be sold, provided, or offered under, the POP OF CULTURE Marks.

#### INTERROGATORY NO. 2:

For each of the POP OF CULTURE Goods and Services, state the date that POP OF CULTURE was first used anywhere and first used in interstate commerce on or in connection with each such product or service.

#### INTERROGATORY NO. 3:

State the date of first sale anywhere of each of the POP OF CULTURE Goods and Services.

#### INTERROGATORY NO. 4:

For each of the POP OF CULTURE Goods and Services, describe in detail the channels of trade and distribution in which such products or services are sold, provided, or offered, or intended to be sold, provided, or offered, including without limitation, the type of retailer or outlet in which each such product or service is sold, provided, offered, or is intended to be sold, provided or offered.

#### INTERROGATORY NO. 5:

For each of the POP OF CULTURE Goods and Services, describe in detail the demographic market to which those products and services are sold, offered or directed, or intended to be sold, offered or directed. Such description shall include the age, location, and mean household income of those purchasers who Applicant expects and/or intends to buy and use such products and/or of those viewers, consumers, or purchasers of such services.

INTERROGATORY NO. 6:

For each of the POP OF CULTURE Goods and Services, describe in detail how that mark appears, or is intended to appear, on or in connection with each such product or service, including without limitation, the location and size of said mark, and how it is used in connection with the sale, offering, distribution, production, marketing, or advertising of each such product or service.

INTERROGATORY NO. 7:

State the date(s) that Applicant selected and/or adopted the POP OF CULTURE Marks for use with the services listed in the Applications.

INTERROGATORY NO. 8:

Identify all persons who were involved in, participated in, decided upon, or offered suggestions for, the selection and/or adoption of the POP OF CULTURE Marks by Applicant.

INTERROGATORY NO. 9:

State all facts related to Applicant's awareness or knowledge of Opposer's use of the CULTUREPOP Mark, the CulturePop.com website, or the services offered by Opposer under the CULTUREPOP Mark, at the time that Applicant selected and/or adopted, or filed the Applications to register, the POP OF CULTURE Marks, including, but not limited to, describing in detail what Applicant knew about any of the foregoing and the identity of the person with such knowledge.

INTERROGATORY NO. 10:

State all facts related to whether Applicant has ever conducted a trademark search of any kind (on-line, full search, or manual search of records of the U.S. Patent and Trademark Office or any other registrar of trademarks) relating to the POP OF CULTURE Marks or any other trademark containing the terms POP or CULTURE, including, but not limited to, identifying each such search report by providing the date on

which the search was conducted, and stating whether the CULTUREPOP Mark or Opposer were uncovered or disclosed in any such search.

INTERROGATORY NO. 11:

Describe in detail the method of marketing, promotion, and advertising of each of the POP OF CULTURE Goods and Services.

INTERROGATORY NO. 12:

State separately the annual and total amount spent by or on behalf of Applicant for advertising, promoting, or marketing the POP OF CULTURE Goods and Services from the date of first use to present. If Applicant does not maintain records of the amounts spent on the advertisement and promotion of the POP OF CULTURE Goods and Services, state the annual and monthly amount spent by or on behalf of Applicant for the advertisement and promotion of all of Applicant's products or services regardless of the mark or name applied to such products or services from the date of first use of the POP OF CULTURE Marks to the present.

INTERROGATORY NO. 13:

Identify and describe in detail any marketing, promotion, or advertising plans or programs of Applicant's directed toward or targeted to any particular trade, industry or consumer group for the POP OF CULTURE Goods and Services, including, but not limited to, identifying each such trade, industry, or consumer group.

INTERROGATORY NO. 14:

If Applicant has ever received any unfavorable comments, evaluations or information, or any criticism or complaints about the quality of the POP OF CULTURE Goods and Services, identify and describe in detail all communications which refer, relate, or pertain to all such comments, evaluations, information, criticism, and complaints, the date of each such communication, and the persons who made and received such communication.



INTERROGATORY NO. 15:

Identify and describe in detail all instances in which Applicant received any requests, inquiries, or statements from any person relating to whether there is or was some relationship, association, affiliation, or license between Opposer and Applicant or between the CULTUREPOP Mark or Applicant and the goods or services offered by Opposer or the POP OF CULTURE Goods and Services, and for each instance, identify all individuals who have knowledge of the facts thereof, the context of each instance, and the date of each instance.

INTERROGATORY NO. 16:

Identify all surveys, public opinion polls, or any other forms of consumer or market research known to Applicant which refer, relate to, or pertain in any way to the POP OF CULTURE Marks, the CULTUREPOP Mark, the CulturePop.com website, or Opposer.

INTERROGATORY NO. 17:

Identify and describe in detail all media used by Applicant to run or publish anywhere any advertisements bearing or featuring the POP OF CULTURE Marks or the POP OF CULTURE Goods and Services anywhere, including, but not limited to, the number of times each print advertisement was run or published, the time of day or night each radio or television advertisement was run, the length of each radio or television advertisement, and the location and size of each print advertisement in each publication or medium identified.

INTERROGATORY NO. 18:

Identify and describe in detail all contracts, participation agreements, syndication agreements, licensing agreements, production agreements, manufacturing agreements, distribution agreements, finance agreements, or arrangements between Applicant and any third-party relating to any POP OF CULTURE Goods and Services or the POP OF CULTURE Marks.

INTERROGATORY NO. 19:

Identify and describe in detail all cross-marketing agreements, website linking agreements, promotion agreements, sponsorship agreements, or other marketing or advertising arrangements between Applicant and any third party relating to any of the POP OF CULTURE Goods and Services, including but not limited to, stating the date of each such agreement or arrangement, the term of each such agreement or arrangement, a description of the rights licensed or granted, and the types of goods or services relating to each such agreement.

INTERROGATORY NO. 20:

Identify all keywords, Adwords, or search terms purchased or bid on for the POP OF CULTURE Goods and Services and all electronic tags or markings or other search terms attached to, associated with, or flagged for the POP OF CULTURE Goods and Services.

INTERROGATORY NO. 21:

State all facts that relate to, support, or negate Applicant's allegations in Paragraph 7 of Applicant's Answer denying that "[t]he registration of Applicant's POP OF CULTURE [M]ark is likely to cause confusion, mistake, or deception as to the source or origin of Applicant's goods and services offered under the POP OF CULTURE Mark, and/or to draw a false association, sponsorship, connection, affiliation, or endorsement with Opposer, the CulturePop.com website, and or the CULTUREPOP Intellectual Property."

INTERROGATORY NO. 22:

State the actual meaning or connotation of each of the POP OF CULTURE Marks and the meaning or connotation intended by Applicant of each of the POP OF CULTURE Marks.

INTERROGATORY NO. 23:

State all facts that relate to, support, or negate Applicant's contention in its May 18, 2012 letter that "the wording POP and CULTURE are descriptive when used in connection with services on the subject of pop culture."

INTERROGATORY NO. 24:

State all facts that relate to, support, or negate Applicant's contention in its May 18, 2012 letter that the CULTUREPOP Mark "is further weakened by its presence within a crowded field of companies that offer online services using POP CULTURE-formative marks," including but not limited to, an identification of all third party marks on which Applicant intends to rely, the goods or services for which such marks are used, a description of the scope of use and recognition of each such mark, the amount of sales and/or revenue generated from each third party mark, and the amount spent to market, promote or advertise each third party mark for the last five years.

INTERROGATORY NO. 25:

State all facts that relate to, support, or negate Applicant's Affirmative Defense as stated in Applicant's Answer.

INTERROGATORY NO. 26:

Identify all entities who are affiliates of Applicant, including all entities who own or control at least 25 percent of Applicant's business, or who are at least 25 percent owned by or controlled by Applicant or with whom Applicant shares any common officers or directors.

INTERROGATORY NO. 27:

State all facts that relate to, support, or negate Applicant's contention in its May 18, 2012 letter that "the CULTUREPOP mark is entitled to, at best, a narrow scope of protection;" and that the CULTUREPOP mark is "conceptually and commercially weak."

INTERROGATORY NO. 28:

State all facts that relate to, support, or negate Applicant's contention in its May 18, 2012 letter that "the marks POP OF CULTURE and CULTUREPOP each create a unique commercial impression sufficient to avoid confusion."

INTERROGATORY NO. 29:

State all facts that relate to, support, or negate Applicant's contention in its May 18, 2012 letter that "the parties' core services represented by each mark are sufficiently dissimilar to avoid confusion."

INTERROGATORY NO. 30:

State all facts that relate to, support, or negate Applicant's contention in its May 18, 2012 letter that "the source of services offered under our POP OF CULTURE mark—E! Entertainment Television—will always be readily apparent to consumers thereby eliminating the possibility of consumer confusion."

INTERROGATORY NO. 31:

Separately state the total amount of sales, in units and dollars, of each product bearing, sold under, or offered under the POP OF CULTURE Marks, and the total revenue generated from the services offered under the POP OF CULTURE Marks.

INTERROGATORY NO. 32:

Identify all persons who provided information for Applicant's responses to these Interrogatories, and for Applicant's responses to Opposer's First Set of Requests for Admission, and Applicant's Responses to Opposer's First Set of Request for Production of Documents served concurrently herewith.

INTERROGATORY NO. 33:

State the total number of units manufactured of each product bearing, sold under, or offered under the POP OF CULTURE Marks to date.

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP

Dated: January 24, 2014

By: \_\_\_\_\_  
Jill M. Pietrini  
Whitney Walters  
*Attorneys for Opposer*  
Ovation LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT E! ENTERTAINMENT TELEVISION, LLC** is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Michael J. McCue  
LEWIS AND ROCA LLP  
3993 Howard Hughes Parkway, Ste. 600  
Las Vegas, Nevada 89169

on this 24<sup>th</sup> day of January, 2014.

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LaTrina A. Martin

SMRH:415540608.1

# EXHIBIT F

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<p>In re Matter of Application No. 85/569,798 for the mark: POP OF CULTURE</p> <p>Ovation LLC,</p> <p>Opposer,</p> <p>vs.</p> <p>E! Entertainment Television, LLC,</p> <p>Applicant.</p>	<p>Opposition No. 91-210506</p> <p><b>OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION TO APPLICANT E! ENTERTAINMENT TELEVISION, LLC</b></p>
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Pursuant to Fed.R.Civ.P. 34 and 37 C.F.R. § 2.120(a)(1), Opposer Ovation LLC (“Opposer”) hereby requests that Applicant E! Entertainment Television, LLC (“Applicant”) produce and permit the inspection and copying of the documents described herein, regardless of whether only a part of any document meets the description.

Opposer requests that such documents be made available within thirty days after service hereof by sending the requested documents through the U.S. mail service to accompany Applicant’s written response to Opposer’s First Request for Production to Applicant (“Request”).

This Request is intended to cover all documents and things in the possession of Applicant, or subject to its custody and control, or available to Applicant wherever such documents and things are located, including, but not limited to, any of Applicant’s offices or any other office maintained or used by Applicant, its agents, employees, joint venturers, partners, independent contractors, accountants or attorneys, or any other



location where documents are kept.

If any document covered by this Request is withheld for any reason, on a claim of privilege, attorney-work product or otherwise, Applicant shall provide a listing of such withheld documents stating the form of the document withheld, the date of its preparation, the author, each addressee or recipient, the subject matter, the reason for which Applicant is withholding such document, the basis for any claim of privilege for which a document is withheld, and the name and address of any person or persons presently having custody or control of the same or a true copy thereof.

If documents herein requested cannot be produced because they have been destroyed, cannot be located, or are otherwise thought no longer to exist, please provide a statement, indicating to the best of Applicant's ability, the form of the document, the date of its preparation, the author(s), each addressee or recipient, and the subject matter. Further, this Request is a continuing Request. Consequently, if any of the documents which were not produced or could not be produced for the reasons given above, or are discovered, or located, or, for any other reason become known to Applicant after responses to these requests are served, then Applicant must immediately notify Opposer's attorneys, named below, and make such documents available for inspection and copying.

Unless otherwise stated, the relevant time period for the requests below is January 2010 to the present.

## I. DEFINITIONS

The following definitions are applicable to terms employed in this Request, in the Instructions accompanying this Request, and in these Definitions.

A. "Opposer" shall mean and refer to Ovation LLC and includes any and all of its predecessors and successors in interest, employees, licensees, agents and representatives of the foregoing, and any other person acting or purporting to act on behalf of any of the foregoing.

B. “Applicant” shall mean and refer to E! Entertainment Television, LLC, and includes any and all of its predecessors and successors in interest, any and all of its subsidiaries, affiliates and affiliated entities, and its partners, employees, agents, officers, directors, licensees, and representatives of the foregoing, and any other person acting or purporting to act on behalf of any of the foregoing.

C. The “Applications” shall mean the trademark application for the mark POP OF CULTURE, Application No. 85/569,798, which is the subject of this Opposition proceeding, and the trademark applications for the mark E POP OF CULTURE, Application Nos. 85/937,423 and 85/937,399

D. The “CULTUREPOP Mark” shall mean Opposer’s federal application(s) to register such mark, and the mark CULTUREPOP, as used by Opposer.

E. The “POP OF CULTURE Marks” refers to the marks that are the subject of the Applications.

F. The term “POP OF CULTURE Goods and Services” refers to the services offered or the goods bearing, sold or offered under, or intended to be sold or offered under the POP OF CULTURE Marks.

G. The term “person” refers to natural persons, organizations, associations, partnerships, joint ventures, corporations and other legal entities (including Applicant), and the actions taken by a person include the actions of directors, officers, owners, members, partners, joint venturers, employees or agents acting on the person’s behalf.

H. The singular includes the plural and *vice versa*; the words “and” and “or” shall be construed in both the conjunctive and disjunctive; the word “all” means “any and all;” the word “any” means “any and all.”

I. The terms “relates” and “refers” mean directly or indirectly mentioning, discussing, describing, pertaining to or connected with, a stated subject matter.

J. The term “document” is used in its customary broad sense and encompasses, without limitation, all handwritten, typed, printed or otherwise visually or

aurally reproduced materials, whether copies, drafts or originals, emails, electronically stored, created or transmitted documents, and regardless of whether they are privileged against discovery on any ground, or within the possession, custody or control of Applicant, or its directors, officers, employees, agents, attorneys, consultants or representatives, including but not limited to: letters, correspondence, cables, wires, telegrams, notes, memoranda, diaries, notes or records of telephone conversations, notes or records of personal conversations or interviews, interoffice and intraoffice communications of all types, drawings, plans, sketches, charts, notebooks, data, operating and maintenance manuals, operating and product specifications, photographs, movies and recordings, books, catalogs, labels, packaging, containers, tags, advertisements, promotional materials, storyboards, press releases, reports, studies, questionnaires, assignments, agreements and other official papers and legal instruments, annual reports, management reports, project reports, reports to shareholders and minutes and reports of meetings (including meetings of directors, officers, executive boards and committees), lists of persons attending meetings, bills, invoices, orders, books, records, files, published material of any kind, and microfilms of documents that may have been destroyed. Any original or copy of a document containing or having attached to it any alterations, notes, comments or other material not included in the first document shall be deemed a separate document.

K. As used herein, the term “identify” means:

1. as to documents, give their dates, a detailed description of the document, the author thereof, the signee thereof, and specify the person having custody or control thereof;
2. as to natural persons, give their full name, business address (or, if not available, home address) and telephone number, employer, job title and, if employed by Applicant, their dates and regular places of employment and general duties;

3. as to corporations, give the full name and present or last known address of the principal place of business of the corporation, identify the officers and directors of the corporation, and the state of incorporation of the corporation;
4. as to partnerships, state whether the partnership is a general or limited partnership, identify the limited and general partners of the partnership, and state the principal place of business of the partnership; and
5. as to joint ventures or other associations, identify all joint venturers or members of the association and state the principal place of business of the joint venture or association.

## II. DOCUMENT REQUESTS

### REQUEST FOR PRODUCTION NO. 1:

Representative samples of documents identifying each type of good and each type of service offered under or intended to be offered under the POP OF CULTURE Marks.

### REQUEST FOR PRODUCTION NO. 2:

All documents relating to the date(s) of first use anywhere and in interstate commerce by Applicant of the POP OF CULTURE Marks.

### REQUEST FOR PRODUCTION NO. 3:

All documents relating to the date of first sale of each product bearing or sold under the POP OF CULTURE Marks.

### REQUEST FOR PRODUCTION NO. 4:

Specimens of all of website pages, press releases, one sheets, labels, invoices, packing slips, tags, markings, nameplates, and the like, and/or advertising material that constitute the first use claimed for or intended first use of the POP OF CULTURE Marks for any goods or services.

REQUEST FOR PRODUCTION NO. 5:

Two samples of each product bearing, sold under or intended to be sold under the POP OF CULTURE Marks.

REQUEST FOR PRODUCTION NO. 6:

Representative samples of each type of label, hang tag, container, carton, tag, invoice, sticker, box, bag, packaging, and/or other means by which Applicant has applied or used or intends to apply or use the POP OF CULTURE Marks on or in connection with any goods.

REQUEST FOR PRODUCTION NO. 7:

Representative samples of all website pages, press releases, one sheets, catalogs, brochures, fliers, sales meeting materials, broadcast publications (video and audio) and descriptive materials in general, from the date of first use to the present, relating to each of the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 8:

All documents relating to the selection and adoption of the POP OF CULTURE Marks by Applicant and of the availability or clearance of such mark for use and/or registration by Applicant.

REQUEST FOR PRODUCTION NO. 9:

Representative samples of publications in which the POP OF CULTURE Goods and Services have been advertised, promoted, marketed, reviewed or featured anywhere, including without limitation magazines, newspapers, trade publications, and catalogs.

REQUEST FOR PRODUCTION NO. 10:

All documents relating to the channels of distribution and intended channels of distribution of each of the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 11:

All documents identifying the type of retailer, store, or retail outlet, whether brick and mortar or online, which sells, offers for sale, intends to sell, promotes, or advertises any of the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 12:

All documents that relate to, or identify, the market (*i.e.*, type of purchaser), who Applicant expects and intends to actually buy, or use, and/or view the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 13:

All documents identifying any particular trade, industry, or consumer group toward which any marketing or advertising is directed or targeted for the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 14:

All documents relating to surveys, public opinion polls, or any other forms of consumer or market research that relate in any way to the POP OF CULTURE Marks, the POP OF CULTURE Goods and Services, the CULTUREPOP Mark, the CulturePop.com website, marks including the term CULTURE and/or POP, or Opposer.

REQUEST FOR PRODUCTION NO. 15:

Representative samples of all invoices, purchase orders, participation statements, royalty statements, and distribution statements for the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 16:

All inventory reports, order forecasts, and sales forecasts referring or relating to goods or services bearing or sold under the POP OF CULTURE Marks.

REQUEST FOR PRODUCTION NO. 17:

Documents sufficient to reflect the total sales of the goods offered under or bearing the POP OF CULTURE Marks in units and dollars.

REQUEST FOR PRODUCTION NO. 18:

Documents sufficient to reflect the total revenue earned from the sale or offering of any services or content under the POP OF CULTURE Marks.

REQUEST FOR PRODUCTION NO. 19:

Documents sufficient to identify the retail price or intended retail price of each product or service bearing, sold, offered, or provided under, or intended to be sold, offered or provided under the POP OF CULTURE Marks.

REQUEST FOR PRODUCTION NO. 20:

Documents sufficient to identify the wholesale price or intended wholesale price of each product or service bearing, sold, offered, or provided under, or intended to be sold, offered, or provided under the POP OF CULTURE Marks.

REQUEST FOR PRODUCTION NO. 21:

Representative samples of all documents relating to marketing, promotion, or advertising of each of the POP OF CULTURE Goods and Services, including but not limited to, documents relating to marketing and advertising plans or strategies for each such product or service, or cumulatively for the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 22:

All documents that relate to the method of marketing each of the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 23:

Representative samples of all advertisements and marketing material for each of the POP OF CULTURE Goods and Services published, disseminated, distributed, or available or intended to be published, disseminated, distributed, or available.

REQUEST FOR PRODUCTION NO. 24:

All cross-marketing agreements, co-branding agreements, sponsorship agreements, promotion agreements, or other marketing or advertising arrangements relating to the POP OF CULTURE Marks between Applicant and any third-party.

REQUEST FOR PRODUCTION NO. 25:

All documents, for each year from the date(s) of first use to present, showing or from which it can be ascertained, the total amount Applicant has spent to market, advertise and/or promote the POP OF CULTURE Goods and Services. If Applicant does not maintain records of such amounts spent regarding the POP OF CULTURE Goods and Services specifically, produce all documents relating to the total amount spent by Applicant or on behalf of Applicant to market, advertise and/or promote all of Applicant's goods and services regardless of the mark or name applied to such goods and services.

REQUEST FOR PRODUCTION NO. 26:

All documents relating to any registration or application for registration of POP OF CULTURE by Applicant as a trademark, service mark, trade name, or fictitious business name in the U.S. Patent & Trademark Office, in any of the states of the United States, or in any governmental agency or department of the United States, or of any state, county, or city.

REQUEST FOR PRODUCTION NO. 27:

All documents relating to any registration or application for registration of POP OF CULTURE by Applicant as a trademark, service mark, trade name, or fictitious business name in any international or foreign governmental agency or department.

REQUEST FOR PRODUCTION NO. 28:

All documents relating to any registration or application for registration, in whole or in part, of POP OF CULTURE as a domain name or address on the internet or on any other computer network.



REQUEST FOR PRODUCTION NO. 29:

All documents reflecting or relating to any communications that Applicant has had, orally or in writing, with any person regarding Applicant's rights to use and/or registration, or the use, of the POP OF CULTURE Marks, the CULTUREPOP Mark, the CulturePop.com website, or any marks including the terms POP or CULTURE.

REQUEST FOR PRODUCTION NO. 30:

All documents evidencing, suggesting, or relating to any confusion between Applicant's POP OF CULTURE Goods and Services, on the one hand, and any products or services offered under the CULTUREPOP Mark, on the other hand, or any perceived sponsorship, license, or approval by Opposer of the POP OF CULTURE Goods and Services, or any perceived affiliation of any kind between Opposer and the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 31:

All documents relating to any demand made upon Applicant to abandon, modify, or alter its use of the POP OF CULTURE Marks (other than correspondence between Applicant and Opposer), including all documents relating to Applicant's response(s) to any such demand(s).

REQUEST FOR PRODUCTION NO. 32:

All documents relating to any alternate marks that were considered by Applicant for use as a trademark, service mark, or trade name instead of the POP OF CULTURE Marks.

REQUEST FOR PRODUCTION NO. 33:

All assignments and license agreements relating to the POP OF CULTURE Marks or any marks including the terms POP or CULTURE, and all documents and correspondence relating thereto.

REQUEST FOR PRODUCTION NO. 34:

All organization charts or other documents which reflect the organization and operational structure of Applicant and its related entities or their predecessors.

REQUEST FOR PRODUCTION NO. 35:

All organization charts or other documents which reflect the organization and operational structure of all entities that are owned by, share common ownership with, or have an ownership or management interest in Applicant and its related entities.

REQUEST FOR PRODUCTION NO. 36:

All business plans of Applicant and its related entities for the POP OF CULTURE Marks or the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 37:

All contracts between Applicant, on the one hand, and its (a) distributors of, (b) manufacturers of, (c) providers/suppliers of, and/or (d) retailers for products offered under the POP OF CULTURE Marks, on the other hand.

REQUEST FOR PRODUCTION NO. 38:

All participation agreements and statements, synchronization agreements, producer agreements, merchandise agreements, distribution agreements and statements, network agreements, agreements concerning broadcasting or streaming content on the internet or to mobile devices, relating to the services offered under the POP OF CULTURE Marks.

REQUEST FOR PRODUCTION NO. 39:

All contracts between Applicant, on the one hand, and owners of content acquired or licensed for use, reprinting, or publication with or for the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 40:

All contracts, licensing agreements, web hosting agreements, linking agreements, website affiliation agreements, web design agreements, or other

arrangements relating to the POP OF CULTURE Marks, POP OF CULTURE Goods and Services, or any mark including the terms POP or CULTURE between Applicant and any third-party.

REQUEST FOR PRODUCTION NO. 41:

All documents evidencing, reflecting, or relating to any complaints by third parties regarding any of the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 42:

All emails, letters, notes, or other communications to or from Applicant or amongst or between Applicant's employees, consultants, management, Board of Directors, or officers relating to Opposer, the CULTUREPOP Mark, the CulturePop.com website, or any marks including the terms POP or CULTURE.

REQUEST FOR PRODUCTION NO. 43:

All documents relating to the date that Applicant first became aware or acquired knowledge of Opposer's use, registration, or intended registration of the CULTUREPOP Mark, the CulturePop.com website, or any of the products or services offered under the CULTUREPOP Mark.

REQUEST FOR PRODUCTION NO. 44:

All documents relating to the date that Applicant first became aware or acquired knowledge of Opposer's use, registration, or intended registration of any marks consisting of or including the terms POP or CULTURE.

REQUEST FOR PRODUCTION NO. 45:

All documents that Applicant reviewed or upon which Applicant relied in the preparation of the Applications.

REQUEST FOR PRODUCTION NO. 46:

All documents that Applicant reviewed or upon which Applicant relied in the preparation of Applicant's Answer.

REQUEST FOR PRODUCTION NO. 47:

All documents that Applicant reviewed or upon which Applicant relied in the preparation of Applicant's responses to Opposer's First Set of Interrogatories to Applicant.

REQUEST FOR PRODUCTION NO. 48:

All documents relating to the registration, purchase, acquisition, bid, or use of POP OF CULTURE or any other name, including the words "POP" or "CULTURE," alone or with any other words as metadata, search terms, electronic tags or markings, meta tags, keywords, search engine marketing terms, or other hidden terminology or technology in any website or in any search engine on the internet, or as an "AdWord" for Google, Yahoo, Bing, or any other search engine on the internet, by or on behalf of Applicant.

REQUEST FOR PRODUCTION NO. 49:

Documents sufficient to identify the electronic tags or markings, or search terms attached to, associated with, or flagged for the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 50:

Documents sufficient to identify all internet domain names owned by Applicant that include POP OF CULTURE, or CULTURE.

REQUEST FOR PRODUCTION NO. 51:

All historic and current web pages for any website operated or owned by Applicant that display, use, or feature the POP OF CULTURE Marks or the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 52:

All documents relating to traffic, including the number of visitors and number of "hits" to any website operated or owned by Applicant, that displayed or featured or

currently displays or features the POP OF CULTURE Marks or the POP OF CULTURE Goods and Services.

REQUEST FOR PRODUCTION NO. 53:

All historic and current web pages for any website operated or owned by Applicant that discuss this dispute.

REQUEST FOR PRODUCTION NO. 54:

All artwork or other designs used or to be used with the POP OF CULTURE Marks for any goods or services.

REQUEST FOR PRODUCTION NO. 55:

All documents provided to any expert(s) retained by Applicant as testifying experts in this case.

REQUEST FOR PRODUCTION NO. 56:

All documents reflecting communications between Applicant and all testifying experts retained for this case.

REQUEST FOR PRODUCTION NO. 57:

All documents reflecting the meaning or connotation of the POP OF CULTURE mark.

REQUEST FOR PRODUCTION NO. 58:

All documents that relate to, support or negate Applicant's allegations in Paragraph 4 of Applicant's Answer denying the allegations in Paragraph 4 of the Notice of Opposition.

REQUEST FOR PRODUCTION NO. 59:

All documents that relate to, support or negate Applicant's allegations in Paragraph 5 of Applicant's Answer denying the allegations in Paragraph 5 of the Notice of Opposition.

REQUEST FOR PRODUCTION NO. 60:

All documents that relate to, support or negate Applicant's allegations in Paragraph 6 of Applicant's Answer denying the allegations in Paragraph 6 of the Notice of Opposition.

REQUEST FOR PRODUCTION NO. 61:

All documents that relate to, support or negate Applicant's allegations in Paragraph 7 of Applicant's Answer denying that "[t]he registration of Applicant's POP OF CULTURE [M]ark is likely to cause confusion, mistake, or deception as to the source or origin of Applicant's goods and services offered under the POP OF CULTURE Mark, and/or to draw a false association, sponsorship, connection, affiliation, or endorsement with Opposer, the CulturePop.com website, and or the CULTUREPOP Intellectual Property."

REQUEST FOR PRODUCTION NO. 62:

All documents that relate to, support or negate Applicant's allegations in Paragraph 8 of Applicant's Answer denying that "Opposer will be damaged by the registration of the mark shown in the Application, in that such registration gives Applicant a *prima facie* exclusive right to the use of the POP OF CULTURE mark, despite the likelihood of confusion, mistake, and/or deception, and allows Applicant to trade on Opposer's existing goodwill in the CULTUREPOP mark, the CulturePop.com website, and the CULTUREPOP Intellectual Property."

REQUEST FOR PRODUCTION NO. 63:

All documents that relate to, support or negate Applicant's denial in the Answer that "Opposer is entitled to any relief."

REQUEST FOR PRODUCTION NO. 64:

All documents that relate to, support or negate Applicant's Affirmative Defense(s) as stated in Applicant's Answer.

REQUEST FOR PRODUCTION NO. 65:

All documents that relate to, support or negate Applicant's alleged intellectual property rights in the POP OF CULTURE Marks, or any other marks including the terms POP or CULTURE.

REQUEST FOR PRODUCTION NO. 66:

All documents that relate to, support or negate Applicant's contention in its May 18, 2012 letter that "the wording POP and CULTURE are descriptive when used in connection with services on the subject of pop culture."

REQUEST FOR PRODUCTION NO. 67:

All documents that relate to, support or negate Applicant's contention in its May 18, 2012 letter that "any variation between marks that contain both POP and CULTURE will be sufficient to avoid confusion."

REQUEST FOR PRODUCTION NO. 68:

All documents that relate to, support or negate Applicant's contention in its May 18, 2012 letter that the CULTUREPOP Mark "is further weakened by its presence within a crowded field of companies that offer online services using POP CULTURE-formative marks."

REQUEST FOR PRODUCTION NO. 69:

All documents that relate to, support or negate Applicant's contention in its May 18, 2012 letter that "the CULTUREPOP mark is entitled to, at best, a narrow scope of protection."

REQUEST FOR PRODUCTION NO. 70:

All documents that relate to, support or negate Applicant's contention in its May 18, 2012 letter that "the marks POP OF CULTURE and CULTUREPOP each create a unique commercial impression sufficient to avoid confusion."

REQUEST FOR PRODUCTION NO. 71:

All documents that relate to, support or negate Applicant's contention in its May 18, 2012 letter that "consumers are not likely to be confused as to the source of services offered under the respective marks."

REQUEST FOR PRODUCTION NO. 72:

All documents that relate to, support or negate Applicant's contention in its May 18, 2012 letter that "the parties' core services represented by each mark are sufficiently dissimilar to avoid confusion."

REQUEST FOR PRODUCTION NO. 73:

All documents that relate to, support or negate Applicant's contention in its May 18, 2012 letter that "the source of services offered under our POP OF CULTURE mark—E! Entertainment Television—will always be readily apparent to consumers thereby eliminating the possibility of consumer confusion."

REQUEST FOR PRODUCTION NO. 74:

All documents that relate to, support or negate Applicant's contention in its May 18, 2012 letter that the CULTUREPOP mark is "conceptually and commercially weak."

REQUEST FOR PRODUCTION NO. 75:

All documents evidencing, reflecting, or relating to any alleged additional federal registrations and/or pending applications owned by Applicant for marks related to, derived from, or including the terms POP or CULTURE.

REQUEST FOR PRODUCTION NO. 76:

All documents that relate to, support or negate Applicant's belief that it may sell or offer products or services under the names or trademarks POP OF CULTURE or any other trademark or name related to, derived from, or including the terms POP or CULTURE.



REQUEST FOR PRODUCTION NO. 77:

All documents relating to any third party use on which Applicant intends to rely, including documents sufficient to show: the goods or services for which such marks are used, a description of the scope of use and recognition of each such mark, the amount of sales and/or revenue generated from each third party mark, and the amount spent to market, promote or advertise each third party mark for the last five years.

REQUEST FOR PRODUCTION NO. 78:

All royalty statements or other documents reflecting revenue earned or generated from the offering of services under the POP OF CULTURE Marks.

REQUEST FOR PRODUCTION NO. 79:

All Nielsen ratings and market research for the services offered under the POP OF CULTURE Marks.

REQUEST FOR PRODUCTION NO. 80:

All documents relating to any research of any kind concerning the viewership, recording, or popularity of the services offered under the POP OF CULTURE Marks.

REQUEST FOR PRODUCTION NO. 81:

All documents relating to streaming or broadcasting of services offered under the POP OF CULTURE Marks on the internet or to mobile devices.

REQUEST FOR PRODUCTION NO. 82:

All documents relating to advertising revenue generated, earned, or paid for or relating to services offered under the POP OF CULTURE Marks.

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP

Dated: January 24, 2014

By:

  
\_\_\_\_\_  
Jill M. Pietrini  
Whitney Walters  
Attorneys for Opposer  
Ovation LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION TO APPLICANT E! ENTERTAINMENT TELEVISION, LLC** is being deposited with the United States Postal Service, postage prepaid, first class mail, in an envelope addressed to:

Michael J. McCue  
LEWIS AND ROCA LLP  
3993 Howard Hughes Parkway, Ste. 600  
Las Vegas, Nevada 89169

on this 24th day of January 2014.



LaTrina A. Martin

SMRH:414874155.1

# EXHIBIT G

## Beth Anderson

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**From:** Whitney Walters  
**Sent:** Monday, January 27, 2014 10:52 AM  
**To:** McCue, Michael  
**Cc:** Fountain, Jonathan; LV IP Litigation; Jill Pietrini  
**Subject:** Re: E!/Ovation: Protective Order

Michael,

I will send you a draft protective order with our proposed changes to the standard TTAB order.

Whitney

On Jan 27, 2014, at 10:38 AM, "McCue, Michael" <[MMcCue@lrrlaw.com](mailto:MMcCue@lrrlaw.com)> wrote:

Whitney: We received service of Ovation's discovery responses. I will address the discovery responses in a separate email/letter after I have had the chance to review them in detail. However, I noticed that Ovation is refusing to produce documents without a protective order, including documents you are relying on under Rule 33(d). Ovation would have raised the need for a protective order during the 10 weeks between service of the requests and responses. In any event, please let me know by COB on Wednesday whether Ovation will agree to the standard TTAB protective order and, if not, what changes Ovation proposes. Thanks, Michael

<image001.gif> **Michael McCue, Partner**  
**Lewis Roca Rothgerber LLP | Hughes Center**  
**3993 Howard Hughes Parkway Suite 600 | Las Vegas, Nevada 89169**  
**(T) 702.949.8224 | (F) 702.949.8363**  
**[MMcCue@LRRLaw.com](mailto:MMcCue@LRRLaw.com) | [www.LRRLaw.com](http://www.LRRLaw.com)**

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# EXHIBIT H

## Jill Pietrini

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**From:** Jill Pietrini  
**Sent:** Wednesday, February 12, 2014 2:25 PM  
**To:** 'McCue, Michael'; Whitney Walters  
**Subject:** RE: E!/Ovation

Michael:

I am a bit confused by your response. You apparently believed that you needed discovery from Ovation before broaching settlement. We would like the same. We will begin our document production shortly. I have been out of the office for several months because of foot surgery and recently because of family issues, so to the extent there is any delay, the blame lies with me.

The parties can discuss settlement in earnest, but we would like to have your client's discovery responses, just as your client did.

Jill Pietrini

310.228.3723 | direct  
310.228.3959 | direct fax  
[JPietrini@sheppardmullin.com](mailto:JPietrini@sheppardmullin.com) | [Bio](#)

### SheppardMullin

Sheppard Mullin Richter & Hampton LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067-6017  
310.228.3700 | main  
[www.sheppardmullin.com](http://www.sheppardmullin.com)

**From:** McCue, Michael [<mailto:MMcCue@lrrlaw.com>]  
**Sent:** Monday, February 10, 2014 4:03 PM  
**To:** Jill Pietrini; Whitney Walters  
**Subject:** RE: E!/Ovation

Jill and Whitney: I am writing to follow up on my voice mail and email from last Thursday. I wanted to address a few issues by phone, but will go ahead and set them forth in this email.

First, although we have received Ovation's responses to written discovery requests, we have not received any of the documents that Ovation relied on pursuant to Rule 33(d). In effect, we do not have answers to interrogatories that relied on Rule 33(d). Please produce those documents immediately.

Second, since our responses to Ovation's discovery requests are not due for some time, are you suggesting that the parties hold off on any settlement discussion until we respond? If there is specific information that Ovation believes it needs to have a settlement discussion, then perhaps we can provide that information in some other form. However, I do not understand how settlement discussions would be "one-sided" when the basic information regarding the parties' use of the marks at issue is public and the parties must already have some sense regarding what, if anything, they are willing to do to settle the matter.

Third, I will let you know as soon as possible whether my client is willing to postpone Ovation's document production but, if not, when will you produce the documents requested?

Finally, we are reviewing Ovation's objections and response to E!'s discovery requests and we will get back to you to discuss any additional issues.

Thanks,

Michael

---

**From:** McCue, Michael  
**Sent:** Thursday, February 06, 2014 11:52 AM  
**To:** 'Jill Pietrini'; Whitney Walters  
**Subject:** RE: E!/Ovation

Hi Jill: I left you a vm. Do you have a few minutes to chat via telephone? Michael

**LEWIS ROCA  
ROTHGERBER** Michael McCue, Partner  
Lewis Roca Rothgerber LLP | Hughes Center  
3993 Howard Hughes Parkway Suite 600 | Las Vegas, Nevada 89169  
(T) 702.949.8224 | (F) 702.949.8363  
[MMcCue@LRRLaw.com](mailto:MMcCue@LRRLaw.com) | [www.LRRLaw.com](http://www.LRRLaw.com)

---

**From:** Jill Pietrini [<mailto:JPietrini@sheppardmullin.com>]  
**Sent:** Thursday, February 06, 2014 11:30 AM  
**To:** McCue, Michael; Whitney Walters  
**Subject:** RE: E!/Ovation

Hi Michael:

It would be helpful to have your client's responses to our interrogatories before we discuss settlement. If we served RFAs as well, it would be helpful to have those too. We can delay the document production for both sides to minimize costs, but we have already answered all of your discovery and it would be a bit one-sided settlement discussion without having your client's responses. Our client is interested in settlement, but would like to have the information requested. Is that acceptable to you?

Jill Pietrini

310.228.3723 | direct  
310.228.3959 | direct fax  
[JPietrini@sheppardmullin.com](mailto:JPietrini@sheppardmullin.com) | [Bio](#)

**SheppardMullin**  
Sheppard Mullin Richter & Hampton LLP  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067-6017  
310.228.3700 | main  
[www.sheppardmullin.com](http://www.sheppardmullin.com)

**From:** McCue, Michael [<mailto:MMcCue@LRRlaw.com>]

**Sent:** Thursday, February 06, 2014 10:24 AM

**To:** Whitney Walters; Jill Pietrini

**Subject:** E!/Ovation

Jill and Whitney: Now that the protective order has been entered, can you send me the document production or are you making the documents available for production? Also, before we get too far into discovery, can we have a discussion about whether there is any prospect of settlement? I have time this afternoon or tomorrow. Thanks,  
Michael

**LEWIS ROCA  
ROTHGERBER**

**Michael McCue, Partner**

**Lewis Roca Rothgerber LLP | Hughes Center**

**3993 Howard Hughes Parkway Suite 600 | Las Vegas, Nevada 89169**

**(T) 702.949.8224 | (F) 702.949.8363**

**[MMcCue@LRRLaw.com](mailto:MMcCue@LRRLaw.com) | [www.LRRLaw.com](http://www.LRRLaw.com)**

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# EXHIBIT I

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<p>In re Matter of Application No. 85/569,798 for the mark: POP OF CULTURE</p> <p>Ovation LLC,</p> <p>Opposer,</p> <p>vs.</p> <p>E! Entertainment Television, LLC,</p> <p>Applicant.</p>	<p>Opposition No. 91-210506</p> <p><b>OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT E! ENTERTAINMENT TELEVISION, LLC</b></p>
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Pursuant to Fed.R.Civ.P. Rule 36 and 37 C.F.R. § 2.120(a)(1), Opposer Ovation LLC ("Opposer") hereby requests that Applicant E! Entertainment Television, LLC ("Applicant") admit, within thirty days from the date of service hereof, the truth of the facts set forth herein.

Unless otherwise stated, the relevant time period for the requests for admission ("RFAs") below is January 1, 2010 to the present.

**I. DEFINITIONS**

Opposer incorporates the definitions set forth in Opposer's First Set of Interrogatories and First Set of Requests for Production to Applicant, served on or about January 24, 2014. In addition, Opposer sets forth the following definitions applicable to terms employed in these RFAs:

A. The "POP OF CULTURE Mark" shall mean the mark that is the subject of U.S. Trademark Application No. 85/569,798.

B. The “POP OF CULTURE Application” shall mean the trademark application for the E POP OF CULTURE Mark, Application No. 85/569,798, which is the subject of the Opposition.

C. The “E POP OF CULTURE Applications” shall mean the trademark applications for the E POP OF CULTURE Mark, Application Nos. 85/937,423 and 85/937,399.

## **II. INSTRUCTIONS**

A. Each answer shall specifically admit or deny the matter, or shall set forth, in detail, the reasons why Applicant cannot admit or deny the matter. To the extent that a response to any Request for Admission (“RFA”) is anything other than an unqualified admission, state all facts upon which the response is based.

B. A denial shall fairly meet the substance of the RFA, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, Applicant must specify so much of it as is true and qualify or deny the remainder.

C. These RFAs shall be deemed to seek responses as of the date of the response, but shall be deemed to be continuing, so that any additional information concerning these RFAs that Applicant acquires or which becomes known to Applicant up to and including the time of trial, shall be furnished to Opposer promptly after such information, documents and/or things are acquired by, or become known to, Applicant.

D. Unless otherwise specified, these RFAs seek responses relative to Applicant’s activities and intended activities within the United States, its territories, and

possessions and its use of the E POP OF CULTURE Mark and E POP OF CULTURE Mark in commerce.

### **III. REQUESTS FOR ADMISSION**

#### **REQUEST FOR ADMISSION NO. 1:**

Opposer is a television network with programming devoted to art.

#### **REQUEST FOR ADMISSION NO. 2:**

Opposer is a television network with programming devoted to culture.

#### **REQUEST FOR ADMISSION NO. 3:**

Opposer began using the CULTUREPOP Mark for website services at least as early as August 2010.

#### **REQUEST FOR ADMISSION NO. 4:**

The date of first use of the CULTUREPOP Mark precedes the filing date of the E POP OF CULTURE Application.

#### **REQUEST FOR ADMISSION NO. 5:**

The date of first use of the CULTUREPOP Mark precedes the filing date of the E POP OF CULTURE Applications.

#### **REQUEST FOR ADMISSION NO. 6:**

Opposer developed common law rights in CULTUREPOP which predate the E POP OF CULTURE Application.

#### **REQUEST FOR ADMISSION NO. 7:**

Opposer developed common law rights in CULTUREPOP which predate the E POP OF CULTURE Applications.

#### **REQUEST FOR ADMISSION NO. 8:**

Since the date of first use, Opposer has been using the CULTUREPOP Mark continuously in commerce for a variety of goods and services.

**REQUEST FOR ADMISSION NO. 9:**

Opposer uses the CULTUREPOP Mark in connection with television programming.

**REQUEST FOR ADMISSION NO. 10:**

Opposer uses the CULTUREPOP Mark in connection with website services.

**REQUEST FOR ADMISSION NO. 11:**

Opposer uses the CULTUREPOP Mark for downloadable electronic publications.

**REQUEST FOR ADMISSION NO. 12:**

Opposer has used the CULTUREPOP Mark in connection with television programming.

**REQUEST FOR ADMISSION NO. 13:**

Opposer has used the CULTUREPOP Mark in connection with website services.

**REQUEST FOR ADMISSION NO. 14:**

Opposer has used the CULTUREPOP Mark for downloadable electronic publications in the nature of e-newsletters.

**REQUEST FOR ADMISSION NO. 15:**

Opposer has used the CULTUREPOP Mark for guides in the field of arts.

**REQUEST FOR ADMISSION NO. 16:**

Opposer has used the CULTUREPOP Mark for guides in the field of culture.

**REQUEST FOR ADMISSION NO. 17:**

Opposer has used the CULTUREPOP Mark for guides in the field of entertainment.

**REQUEST FOR ADMISSION NO. 18:**

Opposer has used the CULTUREPOP Mark in connection with a website featuring information about arts.

**REQUEST FOR ADMISSION NO. 19:**

Opposer has used the CULTUREPOP Mark in connection with a website featuring information about culture.

**REQUEST FOR ADMISSION NO. 20:**

Opposer has used the CULTUREPOP Mark in connection with providing non-downloadable electronic publications (e.g., e-newsletters and guides in the field of arts featuring recommendations, trivia questionnaires, news, recipes, and opinion polls).

**REQUEST FOR ADMISSION NO. 21:**

Opposer has used the CULTUREPOP Mark in connection with providing non-downloadable electronic publications (e.g., e-newsletters and guides in the field of culture featuring recommendations, trivia questionnaires, news, recipes, and opinion polls).

**REQUEST FOR ADMISSION NO. 22:**

Opposer has used the CULTUREPOP Mark in connection with providing non-downloadable electronic publications (e.g., e-newsletters and guides in the field of entertainment featuring recommendations, trivia questionnaires, news, recipes, and opinion polls).

**REQUEST FOR ADMISSION NO. 23:**

Opposer has used the CULTUREPOP Mark in connection with creating blogs.

**REQUEST FOR ADMISSION NO. 24:**

Opposer has used the CULTUREPOP Mark in connection with maintaining blogs.

**REQUEST FOR ADMISSION NO. 25:**

Opposer has used the CULTUREPOP Mark for entertainment in the nature of television programs offered on websites.

**REQUEST FOR ADMISSION NO. 26:**

Opposer has used the CULTUREPOP Mark for the production of television programs.

**REQUEST FOR ADMISSION NO. 27:**

Opposer has used the CULTUREPOP Mark for the distribution of television programs.

**REQUEST FOR ADMISSION NO. 28:**

Opposer has used the CULTUREPOP Mark for the production of entertainment events.

**REQUEST FOR ADMISSION NO. 29:**

Opposer has used the CULTUREPOP Mark for the distribution of entertainment events.

**REQUEST FOR ADMISSION NO. 30:**

Opposer has used the CULTUREPOP Mark for providing entertainment information regarding television programs.

**REQUEST FOR ADMISSION NO. 31:**

Opposer has used the CULTUREPOP Mark for providing artists and performers information regarding television programs.

**REQUEST FOR ADMISSION NO. 32:**

Opposer has used the CULTUREPOP Mark for providing arts events information.

**REQUEST FOR ADMISSION NO. 33:**

Opposer has used the CULTUREPOP Mark for providing newsworthy events information.

**REQUEST FOR ADMISSION NO. 34:**

Opposer has used the CULTUREPOP Mark for providing information regarding television personalities.

**REQUEST FOR ADMISSION NO. 35:**

Opposer has used the CULTUREPOP Mark in connection with television programming services.

**REQUEST FOR ADMISSION NO. 36:**

Opposer has used the CULTUREPOP Mark for entertainment in the nature of television programming.

**REQUEST FOR ADMISSION NO. 37:**

Opposer has used the CULTUREPOP Mark in connection with cable television programming.

**REQUEST FOR ADMISSION NO. 38:**

Opposer has used the CULTUREPOP Mark in connection with satellite television programming.

**REQUEST FOR ADMISSION NO. 39:**

Opposer has used the CULTUREPOP Mark in connection with internet programming.

**REQUEST FOR ADMISSION NO. 40:**

Opposer has used the CULTUREPOP Mark in connection with multimedia programming.

**REQUEST FOR ADMISSION NO. 41:**

Opposer has used the CULTUREPOP Mark in connection with programming via wireless networks.

**REQUEST FOR ADMISSION NO. 42:**

Opposer has used the CULTUREPOP Mark in connection with programming via mobile networks.

**REQUEST FOR ADMISSION NO. 43:**

Opposer has used the CULTUREPOP Mark in connection with providing online journals, namely, blogs in the field of entertainment.



**REQUEST FOR ADMISSION NO. 44:**

Opposer has used the CULTUREPOP Mark in connection with the provision of news and information via the internet.

**REQUEST FOR ADMISSION NO. 45:**

Opposer has used the CULTUREPOP Mark in connection with the provision of news and information via mobile networks.

**REQUEST FOR ADMISSION NO. 46:**

Opposer has used the CULTUREPOP Mark in connection with the provision of news and information via wireless networks.

**REQUEST FOR ADMISSION NO. 47:**

Opposer promotes the CULTUREPOP Mark on-air.

**REQUEST FOR ADMISSION NO. 48:**

Opposer promotes the CULTUREPOP Mark on the Ovation television channel.

**REQUEST FOR ADMISSION NO. 49:**

Opposer promotes the CULTUREPOP Mark through websites.

**REQUEST FOR ADMISSION NO. 50:**

Opposer promotes the CULTUREPOP Mark through social media.

**REQUEST FOR ADMISSION NO. 51:**

Opposer promotes the CULTUREPOP Mark through word of mouth.

**REQUEST FOR ADMISSION NO. 52:**

Opposer has promoted the CULTUREPOP Mark on-air.

**REQUEST FOR ADMISSION NO. 53:**

Opposer has promoted the CULTUREPOP Mark on the Ovation television channel.

**REQUEST FOR ADMISSION NO. 54:**

Opposer has promoted the CULTUREPOP Mark through websites.

**REQUEST FOR ADMISSION NO. 55:**

Opposer has promoted the CULTUREPOP Mark through social media.

**REQUEST FOR ADMISSION NO. 56:**

Opposer has promoted the CULTUREPOP Mark through word of mouth.

**REQUEST FOR ADMISSION NO. 57:**

The Ovation television channel has received media attention.

**REQUEST FOR ADMISSION NO. 58:**

The Ovation television channel has received significant media attention.

**REQUEST FOR ADMISSION NO. 59:**

The CulturePop.com website has received media attention.

**REQUEST FOR ADMISSION NO. 60:**

The CulturePop.com website has received significant media attention.

**REQUEST FOR ADMISSION NO. 61:**

August 2010 predates Applicant's selection the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 62:**

August 2010 predates Applicant's selection the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 63:**

August 2010 predates Applicant's first use of the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 64:**

August 2010 predates Applicant's first use of the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 65:**

August 2010 predates the date that the E POP OF CULTURE Application was filed.

**REQUEST FOR ADMISSION NO. 66:**

August 2010 predates the date that the E POP OF CULTURE Applications were filed.

**REQUEST FOR ADMISSION NO. 67:**

Applicant was aware of use of the CULTUREPOP Mark prior to its selection of the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 68:**

Applicant was aware of use of the CULTUREPOP Mark prior to its selection of the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 69:**

Applicant was aware of use of the CULTUREPOP Mark prior to its first use of the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 70:**

Applicant was aware of use of the CULTUREPOP Mark prior to its first use of the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 71:**

Applicant was aware of use of the CULTUREPOP Mark prior to filing the E POP OF CULTURE Application.

**REQUEST FOR ADMISSION NO. 72:**

Applicant was aware of use of the CULTUREPOP Mark prior to filing the E POP OF CULTURE Applications.

**REQUEST FOR ADMISSION NO. 73:**

Applicant was aware of the pending application to register the CULTUREPOP Mark prior to its selection of the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 74:**

Applicant was aware of the pending application to register the CULTUREPOP Mark prior to its selection of the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 75:**

Applicant was aware of the pending application to register the CULTUREPOP Mark prior to its first use of the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 76:**

Applicant was aware of the pending application to register the CULTUREPOP Mark prior to its first use of the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 77:**

Applicant was aware of the pending application to register the CULTUREPOP Mark prior to filing the E POP OF CULTURE Application.

**REQUEST FOR ADMISSION NO. 78:**

Applicant was aware of the pending application to register the CULTUREPOP Mark prior to filing the E POP OF CULTURE Applications.

**REQUEST FOR ADMISSION NO. 79:**

Opposer's trademark CULTUREPOP is famous.

**REQUEST FOR ADMISSION NO. 80:**

Opposer's trademark CULTUREPOP is well-known.

**REQUEST FOR ADMISSION NO. 81:**

Opposer has built up a valuable goodwill in connection with its CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 82:**

The channels of trade of the CULTUREPOP Mark and the E POP OF CULTURE Mark are similar.

**REQUEST FOR ADMISSION NO. 83:**

The channels of trade of the CULTUREPOP Mark and the E POP OF CULTURE Mark are similar.

**REQUEST FOR ADMISSION NO. 84:**

The channels of marketing of the CULTUREPOP Mark and the E POP OF CULTURE Mark are similar.

**REQUEST FOR ADMISSION NO. 85:**

The channels of marketing of the CULTUREPOP Mark and the E POP OF CULTURE Mark are similar.

**REQUEST FOR ADMISSION NO. 86:**

The targeted demographic of the CULTUREPOP Mark and the E POP OF CULTURE Mark are similar.

**REQUEST FOR ADMISSION NO. 87:**

The targeted demographic of the CULTUREPOP Mark and the E POP OF CULTURE Mark are similar.

**REQUEST FOR ADMISSION NO. 88:**

The nature of the content associated with the CULTUREPOP Mark and the E POP OF CULTURE Mark are similar.

**REQUEST FOR ADMISSION NO. 89:**

The nature of the content associated with the CULTUREPOP Mark and the E POP OF CULTURE Mark are similar.

**REQUEST FOR ADMISSION NO. 90:**

The E POP OF CULTURE Mark is similar in appearance to Opposer's CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 91:**

The E POP OF CULTURE Mark is similar in appearance to Opposer's CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 92:**

The E POP OF CULTURE Mark is similar in sound to Opposer's CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 93:**

The E POP OF CULTURE Mark is similar in sound to Opposer's CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 94:**

The E POP OF CULTURE Mark is similar in connotation to Opposer's CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 95:**

The E POP OF CULTURE Mark is similar in connotation to Opposer's CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 96:**

The E POP OF CULTURE Mark is similar in commercial impression to Opposer's CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 97:**

The E POP OF CULTURE Mark is similar in commercial impression to Opposer's CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 98:**

Applicant is aware of the existence of instances of actual confusion between the E POP OF CULTURE Mark and the CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 99:**

Applicant is aware of the existence of actual confusion between the E POP OF CULTURE Mark and the CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 100:**

Applicant has not used the E POP OF CULTURE Mark in connection with all of the goods set forth in the E POP OF CULTURE Application.

**REQUEST FOR ADMISSION NO. 101:**

Applicant has not used the E POP OF CULTURE Mark in connection with all of the services set forth in the E POP OF CULTURE Application.

**REQUEST FOR ADMISSION NO. 102:**

Applicant has not used the E POP OF CULTURE Mark in connection with all of the goods set forth in the E POP OF CULTURE Applications.

**REQUEST FOR ADMISSION NO. 103:**

Applicant has not used the E POP OF CULTURE Mark in connection with all of services set forth in the E POP OF CULTURE Applications.

**REQUEST FOR ADMISSION NO. 104:**

Applicant conducted a trademark search for the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 105:**

Applicant conducted a trademark search for the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 106:**

Opposer and Applicant have no written agreement with each other of any kind.

**REQUEST FOR ADMISSION NO. 107:**

Opposer and Applicant have no oral agreement with each other of any kind.

**REQUEST FOR ADMISSION NO. 108:**

Opposer did not authorize Applicant to use the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 109:**

Opposer did not authorize Applicant to use the E POP OF CULTURE Mark.

**REQUEST FOR ADMISSION NO. 110:**

Opposer did not authorize Applicant to use Opposer's CULTUREPOP Mark.

**REQUEST FOR ADMISSION NO. 111:**

The E POP OF CULTURE Mark is not descriptive of the goods offered by Applicant under the mark.

**REQUEST FOR ADMISSION NO. 112:**

The E POP OF CULTURE Mark is not descriptive of the services offered by Applicant under the mark.

**REQUEST FOR ADMISSION NO. 113:**

The E POP OF CULTURE Mark is not descriptive of the goods offered by Applicant under the mark.

**REQUEST FOR ADMISSION NO. 114:**

The E POP OF CULTURE Mark is not descriptive of the services offered by Applicant under the mark.

**REQUEST FOR ADMISSION NO. 115:**

The CULTUREPOP mark is not descriptive of the services offered by Opposer under the mark.

**REQUEST FOR ADMISSION NO. 116:**

The U.S. Patent and Trademark Office did not refuse registration of the CULTUREPOP mark based on descriptiveness.

**REQUEST FOR ADMISSION NO. 117:**

Opposer did not claim the benefit of Section 2(f) of the Lanham Act in seeking registration of the CULTUREPOP mark.

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP

Dated: February 12, 2014

By: \_\_\_\_\_

  
Jill M. Pietrini  
Whitney Walters

*Attorneys for Opposer*  
Summit Entertainment, LLC



**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT E! ENTERTAINMENT TELEVISION, LLC** is being served via hand delivery in an envelope addressed to:

Michael J. McCue  
LEWIS AND ROCA LLP  
3993 Howard Hughes Parkway, Ste. 600  
Las Vegas, Nevada 89169

on this 12th day of February, 2014.

  
\_\_\_\_\_  
LaTrina A. Martin

SMRH:415540879.1

# EXHIBIT J

**Beth Anderson**

---

**From:** Whitney Walters  
**Sent:** Friday, March 28, 2014 11:37 AM  
**To:** McCue, Michael (MMcCue@lrlaw.com)  
**Cc:** Jill Pietrini  
**Subject:** RE: E!/Ovation

Michael,

We continue to believe that it is necessary for Ovation to have the benefit of E!'s discovery responses (in particular, E!'s responses to interrogatories and RFAs) before the parties begin to discuss settlement. Given that E!'s responses are due April 4, 2014, we suggest waiting until after that to broach settlement. Jill is in trial starting April 7, and I am going on pregnancy leave within the next week. Nonetheless, based on our limited information about the E! show, we are working on a proposed coexistence agreement. However, we reserve the right to modify the terms once we receive your client's discovery responses.

In the meantime, if E! has a concrete settlement proposal to make, please send it to us. While you made some settlement overtures at the outset of the case, indicating E! openness to considering a settlement demand from Ovation, E! has never proposed any terms of its own. We invite you to do so, as that will give the parties a starting point for discussions in April. Since the discovery deadline in this case has been extended to June 7, 2014, we prefer to keep the proceeding moving forward while the parties pursue the possibility of a good faith resolution.

As to your request for an extension, we note that the current deadline of April 4, 2014 already reflects two prior reciprocal extensions of time (one for 30 days and another for 7 days). However, we will give you until April 9, 2014, to serve responses as a professional courtesy.

Best,

Whitney

**From:** McCue, Michael [mailto:MMcCue@lrlaw.com]  
**Sent:** Thursday, March 27, 2014 12:10 PM  
**To:** Whitney Walters  
**Cc:** Jill Pietrini  
**Subject:** RE: E!/Ovation

Whitney: We have not received any response to our proposal below for a settlement procedure or, in the alternative, our request that Ovation provide proposed dates to meet and confer on Ovation's discovery responses. I have been assuming that, under the circumstances, you and/or Jill have not had time to address the matter. While we are waiting for a response, E! requests an additional extension of time to respond to Ovation's discovery requests to April 29. This will provide us and you with more breathing room to address this case. Please let me know. Thanks, Michael

**From:** McCue, Michael  
**Sent:** Friday, March 14, 2014 9:38 AM  
**To:** 'Whitney Walters'  
**Cc:** 'Jill Pietrini'  
**Subject:** RE: E!/Ovation

Whitney: One month has passed since I conveyed the proposal below. I understand and empathize with the family tragedy, but at this point the clock is ticking on the TTAB schedule and E!'s responses to Ovation's discovery requests, which are due on April 4. If Ovation is interested, the proposal I conveyed below is still on the table. However, in the interim, we need to move forward. Please let me know a few dates and times that you are available to confer on Ovation's responses to E!'s discovery requests and Ovation's document production. Thanks, Michael

**From:** McCue, Michael  
**Sent:** Monday, February 24, 2014 1:42 PM  
**To:** 'Whitney Walters'  
**Cc:** Jill Pietrini  
**Subject:** RE: E!/Ovation

Whitney: I am sorry to hear that. Thanks for letting me know. Thanks, Michael

**From:** Whitney Walters [<mailto:wwalters@sheppardmullin.com>]  
**Sent:** Monday, February 24, 2014 1:33 PM  
**To:** McCue, Michael  
**Cc:** Jill Pietrini  
**Subject:** Re: E!/Ovation

Michael,

Jill's stepfather passed away last week, so she has been out of the office attending to family matters. I know she will respond to your email as soon as she can.

Whitney

On Feb 24, 2014, at 1:30 PM, "McCue, Michael" <[MMcCue@lrrlaw.com](mailto:MMcCue@lrrlaw.com)> wrote:

Jill: Can you please provide a response to my email below? Thanks, Michael

**From:** McCue, Michael  
**Sent:** Friday, February 14, 2014 2:21 PM  
**To:** 'Jill Pietrini'  
**Cc:** 'Whitney Walters'  
**Subject:** E!/Ovation

Jill:

I am sorry to hear about your foot surgery and family issues. When requested, we have granted requests for extensions of time and we are generally amenable to granting such requests.

In your email, you assumed that E! needed discovery from Ovation before broaching settlement. However, I broached settlement with Whitney on July 18, 2013, 4 months prior to serving discovery requests. I specifically asked whether Ovation was willing to settle and, if so, on what terms. I also asked whether Ovation is interested in discussing settlement short of E! stopping use of the mark at

issue. After not receiving any substantive response, we proceeded with serving discovery requests in November 2013.

I do not understand why Ovation needs discovery in advance of discussing settlement. Since this is a trademark case, the parties' use of the marks at issue and their respective services offered under the marks is public. Since Ovation initiated this proceeding, I assume it has some idea regarding the terms on which it is willing to settle this matter. As I indicated in my prior email, if there is something specific that Ovation needs to know before commencing settlement discussions, we will consider providing it. However, E! is not going to unnecessarily incur fees in responding to discovery requests that are artificially tied to commencing settlement discussions. Moreover, since Ovation agreed that E! would have a reciprocal extension of time (i.e., a total of 67 days to respond to discovery requests), the requests would not be due until the end of March. By that time, we will have little time left to discuss settlement and, if settlement fails, complete discovery on time.

With respect to Ovation's document production, we served our requests more than 3 months ago. After asking for and receiving 2 extensions of time to respond, Ovation had 67 days to respond to the document requests and assemble responsive documents. Ovation obtained additional time by waiting until serving the responses to raise the need for a protective order. Now that the protective order has been entered, we still do not have any documents from Ovation, including the documents that Ovation allegedly relied on in support of its interrogatory responses, which should have been produced with the interrogatory responses. In response to my request below, Ovation has not identified any date certain by which we will receive the documents.

Notwithstanding any of the foregoing, if Ovation is genuinely interested in discussing settlement, E! proposes the following:



Please let me know if E!'s proposal is acceptable. If not, please provide a proposed date certain by which Ovation will serve the documents that Ovation relied on in response to interrogatories and the documents responsive to our document requests. We will let you know whether the proposed date is acceptable or not. If not, we can resolve the dispute with the Board.

Thanks,  
Michael

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# EXHIBIT K

## Beth Anderson

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**From:** Whitney Walters  
**Sent:** Wednesday, April 02, 2014 1:23 PM  
**To:** Beth Anderson  
**Subject:** FW: E!/Ovation

**From:** McCue, Michael [<mailto:MMcCue@lrrlaw.com>]  
**Sent:** Monday, March 31, 2014 9:29 AM  
**To:** Whitney Walters  
**Cc:** Jill Pietrini  
**Subject:** E!/Ovation

Whitney: While I am encouraged to hear that Ovation is working on a proposed settlement agreement, we have procedural issues that must be addressed.

We made a proposal regarding settlement on February 14 that included postponing our responses to discovery requests. In the alternative, we asked you to provide a date certain by which you would produce Ovation's long-overdue document production. Ten days later, on February 24, you responded and indicated that Jill's father had passed away. Given the personal circumstances, I waited another 3 weeks -- until March 14 -- to reach out again regarding the February 14 proposal. I also asked you to provide dates and times to meet and confer on Ovation's discovery responses. You did not respond. Assuming that you and Jill were addressing family issues, I waited another couple of weeks to March 27, when I asked you again for a response to my February 14 email and again for dates on which we can meet and confer regarding Ovation's discovery responses. I also asked for an extension of 30 days for E! to respond to discovery requests since I had held off work pending your response to my February 14 proposal and assuming that your delay in responding was due to family issues that you and Jill were experiencing. Now, after waiting nearly 6 weeks to respond to my February 14 email, you: (1) again ignored our request for a date certain to produce documents; (2) again ignored our request for a meet and confer; and (3) agreed to give us only 5 days extra days to respond to discovery requests, when we have been waiting for 6 weeks for you to respond to our proposal and waiting months for you to produce even a single document. Ovation has effectively taken an open-ended extension of time to produce documents. E! has been prejudiced by Ovation's failure to produce documents, including, for example, because of the deadline for disclosure of experts.

We will respond to Ovation's discovery requests by April 9. However, given the fact that we have waited months for Ovation to produce documents and given Ovation's refusal to extend the discovery cutoff, we must receive the document production immediately. We do not foreclose settlement discussions or reviewing Ovation's proposed coexistence agreement, but Ovation's delay in producing documents coupled with its refusal to extend the discovery deadlines leaves us with no choice but to again demand immediate compliance.

Michael

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**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this **OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO COMPEL AND TO EXTEND DISCOVERY DEADLINES; AND DECLARATION OF PAUL A. BOST IN SUPPORT THEREOF** is being submitted electronically to the Commissioner for Trademarks, Trademark Trial and Appeals, through ESTTA, on this 29th day of April, 2014.

/s/Lynne Thompson \_\_\_\_\_  
Lynne Thompson

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **OPPOSER'S OPPOSITION TO APPLICANT'S MOTION TO COMPEL AND TO EXTEND DISCOVERY DEADLINES; AND DECLARATION OF PAUL A. BOST IN SUPPORT THEREOF** is being deposited as first class mail, postage prepaid, in an envelope addressed to:

Michael J. McCue  
LEWIS ROCA ROTHGERBER LLP  
3993 Howard Hughes Pkwy, Ste 600  
Las Vegas, NV 89169

on this 29th day of April, 2014.

/s/Lynne Thompson \_\_\_\_\_  
Lynne Thompson

SMRH:421801738.2